

Criminal  
Investigative  
Policy &  
Oversight



**Evaluation of  
DoD Correctional Facility Compliance with Military Sex  
Offender Notification Requirements**

Report Number CIPO2002S003

June 26, 2002

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## **Acronyms**

AFI	Air Force Instruction
AR	Army regulation
BUPERS	Bureau of Naval Personnel
CJSA	The Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DUSD(PI)	Deputy Under Secretary of defense (Program Integration)
HQ AFSFC	Headquarters, Air Force Security Forces Center
HQDA	Headquarters, Department of the Army
IG DoD	Inspector General, Department of Defense
MAJCOM	Major Command
MARADMIN	Marine Administrative
NAVADMIN	Navy Administrative
NAVPERSCOM	Navy Personnel Command
NCIS	Naval Criminal Investigative Service
R.C.M.	Rules for Courts-Martial
SECNAV	Secretary of the Navy
SJA	Staff Judge Advocate
TAV	Technical Assistance Visit
USD(P&R)	Under Secretary of Defense (Personnel and Readiness)
VWPA	Victim and Witness Protection Act of 1982



INSPECTOR GENERAL  
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JUN 26 2002

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (PERSONNEL  
READINESS)  
ASSISTANT SECRETARY OF THE ARMY (MANPOWER  
AND RESERVE AFFAIRS)  
ASSISTANT SECRETARY OF THE NAVY (MANPOWER  
AND RESERVE AFFAIRS)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)

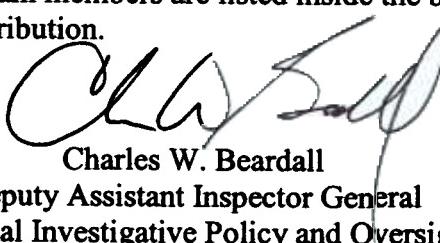
SUBJECT: Evaluation of DoD Correctional Facility Compliance with Military Sex Offender Notification Requirements (Report Number CIPO2002S003)

This report is provided for your review and comment. Your comments on the draft report were considered in preparing the final report and are addressed in detail in the final report. Your specific comments are also included in the final report as Appendix K. We request your comments on the final report within 30 days.

For the reasons discussed in the final report, we did not agree with the Army's response to recommendation A.5, with the Air Force's responses to recommendations A.2. and B.2., and with the Navy's response to A.2. The Services should reconsider their positions on these recommendations in commenting on the final report. We request your prompt action on our recommendations.

Send your comments to the Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, 400 Army Navy Drive, Room 944, Arlington, Virginia, 22202-4704. Should you have questions, please contact Mr. John Perryman, Project Manager, at (703) 604-8765 (DSN 664-8765) or [jperryman@dodig.osd.mil](mailto:jperryman@dodig.osd.mil).

We appreciate the courtesies extended to our evaluation staff throughout this evaluation. The evaluation team members are listed inside the back cover. See Appendix J for the report distribution.

  
Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight

# **EVALUATION OF DoD CORRECTIONAL FACILITY COMPLIANCE WITH MILITARY SEX OFFENDER NOTIFICATION REQUIREMENTS**

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**Office of the Inspector General, DoD**

**Report No. CIPO2002S003**

**June 26, 2002**

**EVALUATION OF  
DoD CORRECTIONAL FACILITY COMPLIANCE WITH  
MILITARY SEX OFFENDER NOTIFICATION REQUIREMENTS**

**Executive Summary**

**Introduction.** In 1994, the Congress enacted the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (the Wetterling Act)<sup>1</sup> requiring certain sex offender registrations and notifications to State and local law enforcement officials in the State where the sex offender resides, is employed, carries on a vocation, or is a student. (See Appendix A for background information.) The Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (CJSA)<sup>2</sup> included military sex offenders under the Wetterling Act coverage and required notifications beginning 1 year after enactment. In addition, under the *Victim and Witness Protection Act of 1982* (VWPA),<sup>3</sup> when an offender is sentenced to confinement, the victim and certain witnesses of the crime are entitled to information concerning the confinement process and changes in confinement status. The custodial agency must provide each victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each. After trial, and at the request of the victim or witness, the custodial official responsible for the actions must notify each requesting victim and witness, at the earliest possible date, of (a) the date on which the offender will be eligible for parole and any scheduled release hearing, (b) any escape, work release, furlough, or other form of release from custody, and (c) death of the offender while in custody.<sup>4</sup>

**Objectives.** Our primary objective for this evaluation was to determine whether the Department of Defense (DoD) satisfies its notification requirements for military sex offenders, including whether DoD and/or individual Service:

- regulatory guidance adequately address the legal requirement to notify State and local law enforcement and registration officials when a convicted military sex offender is released from confinement or is convicted but not confined;
- processes are effective in notifying State and local authorities when a convicted military sex offender will reside in their jurisdiction; and
- processes are effective for notifying victims and witnesses regarding convicted military sex offenders.

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<sup>1</sup> Pub. L. 103-322, Title XVII, § 170101, 108 Stat. 2038, codified, as amended at 42 U.S.C. §14071.

<sup>2</sup> Pub. L. 105-119, Title I, §115(a)(8)(C)(i), 111 Stat. 2466.

<sup>3</sup> Pub. L. 97-291, 96 Stat. 1248, codified, as amended, at various sections of Title 18.

<sup>4</sup> 42 U.S.C. §10607(c)(5).

We announced our evaluation on July 26, 2001, and conducted our fieldwork during August through December 2001. The organizations/activities that we visited or contacted during the evaluation are listed in Appendix H.

**Results.** DoD published guidance providing for sex offender notifications in accordance with statutory requirements. The Services, however, did not fully implement the guidance and generally do not meet the notification requirements. In addition, military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and they do not always satisfy the requirements even when they receive the documentation. As a result, some victims and witnesses did not receive notifications from military confinement facilities when an inmate was released from confinement.

**Summary of Recommendations.** We recommend that the Military Departments revise and reissue their policies on military sex offender notifications, ensuring the policies are consistent with DoD policy and specifically addressing notification requirements for:

- military sex offenders who are convicted by courts-martial and not sentenced to confinement;
- military offenders with prior sex offender convictions who are currently being released from confinement for non-covered offenses; and
- military sex offenders convicted outside the United States, and either confined outside the United States or not confined as a result of the conviction.

We also recommend that the Military Departments:

- establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement;
- adopt systems, with appropriate management oversight mechanisms, to track their sex offender notifications and ensure compliance with Federal laws requiring notifications for military sex offenders;
- revise their current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required; and
- complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.

We further recommend the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)), in coordination with the Office of the General Counsel, DoD, issue guidance on whether a person sentenced by a Summary Court-Martial for a covered offense requires sex offender notifications.

With respect to victim and witness notification, we recommend that the Military Departments take action to ensure that military confinement facilities receive a DD Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status," for each adjudged inmate entering the confinement facility. Requirements should include:

- routine confinement facility reporting that identifies (by name and confinement date) those inmates who were received without a DD Form 2704; and
- procedures for confinement facilities to receive missing DD Forms 2704 immediately after reporting a missing form.

Finally, we recommend that the Air Force revise its current policies and procedures to require (a) confinement facilities to retain victim and witness data both during and after inmate confinement, and (b) restrict victim and witness data access to individuals with a strict need-to-know.

**Management Comments.** On March 27, 2001, we issued this report in draft form for management comments. Between April 19 and June 17, 2002, we received comments from USD(P&R) and each Military Department. Generally, they all concurred with the report. In response to our recommendations, USD(P&R) agreed to revise DoD policy making it clear that covered sex offenses arise from general and special, not summary, courts-marital. The Services all agreed to issue revised policy that complies with DoD criteria and specifically addresses military sex offenders who are (1) convicted but not confined; (2) being released from confinement for a non-covered offense, but have prior sex offender convictions; and (3) convicted at courts-martial outside the United States. They also agreed that they should have time requirements for notifications when a sex offender is convicted and not confined. The Navy advised that it already requires the Naval Criminal Investigative Service (NCIS) to complete these notifications within 15 days. The Air Force, on the other hand, advised that it would require the Air Force Security Police to complete these notifications within 24 hours. Neither the Navy nor the Air Force, however, proposed a time requirement for their legal offices to forward the information required to initiate the notifications. Without these time requirements, time requirements for the actual notifications are not particularly meaningful. Furthermore, we believe the 15 days allotted for NCIS to complete the Navy notifications is excessive, given the sense of urgency generally involved in the sex offender notification program.

The Services also agreed to adopt management oversight mechanisms to track sex offender notifications, and to revise their Reports of Results of Trial to specify whether sex offender notifications are required. They also agreed to initiate actions to satisfy sex offender notifications that they have not yet completed and that were required after the statute became effective. The Army, however, will only make “good-faith” efforts based on the last known or reported address for the sex offender who is no longer under military jurisdiction. This approach may not satisfy the statutory notification requirements. Further, we do not believe that locating and notifying sex offenders no longer under military service jurisdiction will be so difficult as to warrant excusing the statutory requirements. The Navy and Air Force will encounter the same situations and intend to meet their notification requirements.

In commenting on our recommendations concerning the victim and witness program, the Services agreed to adopt oversight regulatory practices to ensure that a DD Form 2704 accompanies each offender sent to a military confinement facility. Finally, in response to our concerns about security of records identifying victims and witnesses, the Air Force responded that its current regulatory guidance addresses this matter. As discussed in the report text, we do not agree that the current Air Force policy is adequate.

# EVALUATION OF DoD CORRECTIONAL FACILITY COMPLIANCE WITH MILITARY SEX OFFENDER NOTIFICATION REQUIREMENTS

## Part I - Introduction

### Background

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act required certain sex offender registrations and notifications to State and local law enforcement officials. The Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998 included military sex offenders under the Wetterling Act coverage and required notifications beginning one year after enactment. Implementing the Wetterling Act within DoD does not require registration of sex offenders, but does require DoD notifications concerning such offenders. Specifically, implementation of the Wetterling Act requires four separate DoD notifications when an offender is convicted of certain sex crimes, hereafter referred to as a covered offense. (Appendix B identifies the relevant offenses under the Uniform Code of Military Justice.) DoD must notify the offender of the individual's obligation to register as a sex offender; and DoD must send notifications to alert three civil law enforcement officials in the area where the offender will reside after the conviction.

In addition to the Wetterling Act requirements, the Victim and Witness Protection Act of 1982 provides that when an offender is sentenced to confinement, the victim(s) and certain witnesses of the crime are entitled to information concerning the confinement process and changes in confinement status. The custodial agency must provide each victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.<sup>5</sup> After trial, and at the request of the victim or witness, the custodial official responsible for the actions must notify each eligible victim or witness, at the earliest possible date, (a) of the date on which the offender will be eligible for parole and any scheduled release hearing; (b) any escape, work release, furlough, or other form of release from custody; (c) any movement between confinement facilities; and (d) death of the offender while in custody.<sup>6</sup>

The Attorney General's Guidelines for Victim and Witness Assistance 2000<sup>7</sup> include the following perspective:

The first Federal victims' rights legislation was the *Victim and Witness Protection Act of 1982* (VWPA). Congress amended and expanded upon the provisions of the 1982 Act in subsequent legislation, primarily the *Victims of*

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<sup>5</sup> 42 U.S.C. §10607(c)(8). In the military, the Trial Counsel or designee performs this function in accordance with DoD Instruction 1030.2, "Victim and Witness Procedures," December 23, 1994.

<sup>6</sup> 42 U.S.C. §10607(c)(5).

<sup>7</sup> U.S. Department of Justice, Office of the Attorney General, Attorney General Guidelines for Victim and Witness Assistance, 2000, pp 3-4.

*Crime Act of 1984*,<sup>8</sup> the *Victims Rights and Restitution Act of 1990*,<sup>9</sup> the *Violent Crime Control and Law Enforcement Act of 1994*,<sup>10</sup> the *Antiterrorism and Effective Death Penalty Act of 1996*,<sup>11</sup> and the *Victim Rights Clarification Act of 1997*.<sup>12</sup> In the VWPA, Congress made findings about the criminal justice system's treatment of crime victims. Congress recognized that without the cooperation of victims and witnesses, the criminal justice system would cease to function. Yet, often those individuals were either ignored by the system or simply used as "tools" to identify and punish offenders. Congress found that all too often a victim suffers additional hardship as a result of contact with the system. The VWPA was enacted "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of defendants; and, to provide a model for legislation for State and local governments." Also, in the VWPA Congress instructed the Attorney General to develop and implement guidelines for the Department of Justice consistent with the purposes of the Act. Congress set forth the objectives of the guidelines, which include the provision of services to victims; notification about protection, services, and major case events; consultation with the Government attorney; a separate waiting area at court; the return of property; notification of employers; and training for law enforcement and others. Congress also instructed the Attorney General to assure that all Federal law enforcement agencies outside the Department of Justice adopt guidelines consistent with the purposes of the VWPA (see 18 U.S.C. §1512, Historical and Statutory Notes, *Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System*). In conformance with the Congressional directive, the Attorney General promulgated the *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)*. Periodically, the *AG Guidelines* have been revised to incorporate new legislative provisions.

(Statutory citations added.)

## Reason for Evaluation

In August 2000, a detective with the San Diego, California, police department complained to the IG DoD that a Navy correctional facility in California was not complying with provisions in the CJSAs requiring notifications when a military sex offender was released from confinement. We validated the complaint and determined that incomplete Navy guidance had led to the non-notifications.<sup>13</sup> Additionally, while researching the complaint, we identified only limited Service-wide policy to guide the required notifications. We, therefore, decided to evaluate the notification process.

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<sup>8</sup> Pub. L. 98-473, Title II, Chapter XIV, 98 Stat. 2170, codified, as amended, at various sections of Titles 18 and 42.

<sup>9</sup> Pub. L. 101-647, Title V, 104 Stat. 4820, codified, as amended, at 42 U.S.C. §10601, *et seq.*

<sup>10</sup> Pub. L. 103-322, 108 Stat. 1796, codified, as amended, at various sections of Titles 8, 18, 28, and 42.

<sup>11</sup> Pub. L. 104-132, 110 Stat. 1214, codified, as amended, at various sections of Titles 1, 8, 18 and 42.

<sup>12</sup> Pub. L. 105-6, 111 Stat. 12, codified at 18 U.S.C. §§3481 note, 3510, 3510 note and 3593.

<sup>13</sup> In assessing the complaint, we found the Navy had issued corrected guidance to its field activities. However, during this evaluation, we found that the incomplete guidance was still in use at another large Navy correctional facility. This facility was also *not* notifying local law enforcement upon releasing sex offenders.

Our research for the evaluation identified an earlier IG DoD report that addressed requirements in the VWPA and the Attorney General Guidelines, including VWPA implementation at military confinement facilities.<sup>14</sup> According to this report, 13 military confinement facilities were visited in 1991, and none had victim and witness assistance notification procedures in place. Our research also showed that the individuals responsible for performing victim and witness notifications at military confinement facilities were usually the same individuals who were responsible for sex offender notifications. As a result, we decided to include military confinement facility notifications to victims and witnesses in our evaluation coverage.

## Evaluation Objectives, Scope and Methodology

Our primary objective was to determine whether the Services satisfy their notification requirements for military sex offenders, including whether DoD and/or individual Service:

- regulatory guidance adequately address the requirement to notify State and local law enforcement and registration officials when a convicted military sex offender is released from confinement or is convicted and not confined;
- processes are effective in notifying State and local authorities when a convicted military sex offender will reside in their jurisdiction; and
- processes are effective for notifying victims and witnesses regarding convicted military sex offenders.

The CJSAs required sex offender notifications commencing one year after enactment, which occurred on November 26, 1997. DoD, therefore, was required to begin sex offender notifications on November 25, 1998. Based on this requirement, we asked the judge advocate headquarters for the Army, Navy, Air Force, and Marine Corps to identify all military members convicted of a covered sex offense by courts-martial during the period November 25, 1998, through December 31, 2000. The judge advocate offices identified 600 relevant convictions (232 Army, 153 Navy, 106 Air Force, and 109 Marine). From this group, we selected a statistical random sample to determine if the Services satisfied their sex offender and victim/witness notification requirements. We then organized this sample according to Service responsibility for making the notifications; that is, the Service that operated the confinement facility where the prisoner was confined or, if the sex offender was convicted and not confined, the Service that

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<sup>14</sup> Inspector General, Department of Defense, Inspection Report, 93-INS-03, "Victim and Witness Assistance," December 12, 1992, p 50.

convicted the offender. Ultimately, we identified notification requirements for the sample, as follows.<sup>15</sup>

**Table A**  
**Required Notifications**

Type of Notification Required	Army	Navy	Air Force	Marine Corps	Total
<b>Sex Offender</b>	19	26	29	23	97
<b>Victim / Witness</b>	29	38	28	31	126

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<sup>15</sup> Our sample was designed by using the 95 percent confidence level to reflect DoD-wide contributions to the total cases. We originally selected 35 offenders for each Service (140 total offenders) to ensure equal focus on individual Service policies, procedures and processes that govern notifications. During our fieldwork, however, we determined that some prisoners were not confined at the prisons originally identified to us. In these cases, it was necessary to move accountability to the Service with actual custody. Further, 18 offenders included in the original sample were convicted for *non-covered* offenses, and 25 sex offenders remained in confinement, thereby not requiring current sex offender notifications. Similarly, for victim and witness notification requirement purposes, 14 offenders were not sentenced to confinement, obviating any requirement for confinement facility notifications to victims and witnesses. Victim and witness notification requirements, however, apply to both covered and non-covered sex offenses.

# **EVALUATION OF DoD CORRECTIONAL FACILITY COMPLIANCE WITH MILITARY SEX OFFENDER NOTIFICATION REQUIREMENTS**

## **Part II – Evaluation Results**

### **Sex Offender Notification**

**Finding A. DoD published guidance providing for sex offender notifications in accordance with statutory requirements. The Services, however, did not fully implement the guidance and generally are not meeting their notification requirements.**

#### **Introduction**

The Wetterling Act requires registration based on sex offender convictions. It does not matter whether a convicted sex offender is actually confined. It also does not matter whether the conviction occurs in or outside the United States. Although more difficult in application, it also does not matter that a military prison inmate is being released from confinement for a non-covered offense, if the inmate had a previous covered offense conviction. The previous sex offense conviction requires current registration and notification to State and local law enforcement officials even though the current confinement may not involve a covered offense.

#### **DoD Guidance**

In 1999, DoD began issuing policy to implement the Wetterling Act and CJSA. DoD Directive (DoDD) 1325.4, “Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities,” September 28, 1999, required the Military Departments to establish policies and procedures ensuring compliance with the statutory sex offender notification requirements. DoD Instruction (DoDI) 1325.7, “Administration of Military Correctional Facilities and Clemency and Parole Authority,” July 17, 2001, implemented the policies and procedures.<sup>16</sup> The DoDI specifically

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<sup>16</sup> The Assistant Secretary of Defense (Force Management Policy) (ASD(FMP)), Office of the Under

identified the categories of conduct punishable under the Uniform Code of Military Justice that were subject to the notification requirements (see Appendix B). DoDI 1325.7 also required several specific actions:

- Upon an inmate's entry into the confinement facility, the commander will review all available records concerning the inmate and determine if the inmate was ever convicted of a covered offense.
- Before releasing an inmate from a confinement facility, the commander will review all available records concerning the inmate and determine if the inmate was ever convicted of a covered offense.
- Before final inmate release, the correctional facility will (1) advise the inmate convicted of a covered offense about registration requirements in the State where the inmate expects to reside, work, carry on a vocation, or be a student after release from military confinement; (2) advise the inmate that he/she is subject to sex offender registration in the State; and (3) have the inmate acknowledge the registration requirements and include the acknowledgement in the inmate's permanent military file.
- Five days before the final release date, the confinement facility will provide separate notices to (1) the chief law enforcement officer for the State, (2) the chief law enforcement officer for the local jurisdiction, and (3) the State or local agency responsible for sex offender registrations in the area where the inmate expects to residence after release. The notices to State and local officials include: the inmate's intended residence; acknowledgment that the inmate is subject to registration; the inmate's criminal history record; and the offense for which the inmate was confined.
- The Military Department will establish a system to verify that required sex offender notifications are actually made.<sup>17</sup>

Although the DoD guidance required specific Service actions necessary to meet the notification requirements, the guidance did not address specific types of courts-martial (Summary Courts-Martial, Special Courts-Martial, and General Courts-Martial) convictions that are subject to the Wetterling Act and CJSA requirements. Of specific relevance is the manner in which Summary Courts-Martial should be treated for

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Secretary of Defense (Personnel and Readiness) (OUSD(P&R)), originally disseminated guidance on required notifications to the Service Secretaries in a Policy Memorandum dated December 23, 1998, Subject: Notice of Release of Military Offenders Convicted of Sex Offenses and Crimes Against Minors. The memorandum covered both confined and non-confined offenders. The guidance pertaining to *confined* offenders was incorporated into DoDI 1325.7 when issued. The guidance on *non-confined* offenders was added when the Instruction was reissued on July 17, 2001.

<sup>17</sup> The 1999 DoDI (Paragraph 6.18.6.1.4) required that the "... Secretaries of the Military Departments will establish a system to track and ensure compliance with the registration requirements by all prisoners [emphasis added] from the Service who have or are required to register." This requirement exceeded the level necessary to determine compliance with notification requirements and was changed when DoDI 1325.7 was revised in 2001. A representative advised us that the Deputy Under Secretary of Defense for Program Integration, the proponent for the instruction, never intended for the Services to determine and track *inmate* compliance with the sex offender registration requirements.

notification purposes in light of the U.S. Supreme Court's decision in Middendorf v. Henry.<sup>18</sup> The guidance also did not address how the Services should meet the requirements when a sex offender is convicted, but not confined, or is convicted and confined outside the United States. Appendix C presents a flow chart showing the notification process required in DoD guidance.

## Service Policy

The Services have not fully implemented the DoD policy. Only the Air Force published Service-wide policy to govern sex offender notifications. Air Force Instruction (AFI) 31-205, "Corrections Program," June 21, 1999, and AFI 51-201, "Administration of Justice," November 2, 1999, cover all convicted offenders, whether or not confined.<sup>19</sup>

In the Navy, the Navy Personnel Command (NAVPERSCOM) is responsible for the confinement function. In 1999, NAVPERSCOM issued memorandum policy, NAVPERSCOM memorandum, "Notice of Release of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," 5111, Ser 84/083, July 21, 1999, establishing a sex offender notification program for Navy confinement facilities. The initial policy, however, was incomplete in that it did not require Navy confinement facilities to notify local law enforcement officials when releasing an inmate from confinement. NAVPERSCOM reissued the memorandum guidance in April 2000, correcting this omission.<sup>20</sup> Neither the initial nor revised policy includes guidance for notifications related to Summary Courts-Martial convictions. They only address requirements related to Special or General Courts-Martial convictions. Further, they do not include guidance for notifications involving offenders who are convicted and then not confined.

Subsequent to our fieldwork, the Navy issued Secretary of the Navy (SECNAV) Instruction 5800.14, "Notice of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," October 23, 2001. This Instruction prescribes notification processes for sex offenders convicted of covered offenses (whether or not confined) at Special or General Courts-Martial, and requires notifications to State and local officials. Overall, however, the Navy guidance is still inadequate because it does not prescribe notifications when an inmate not currently confined on sex offender charges, but with a previous sex-offense conviction, is released from confinement.

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<sup>18</sup> Pub. L. 105-119, Title I, §115(a)(8)(C)(ii), 111 Stat. 2466, requires a military member "sentenced by a court martial" for a covered offense to register as a sex offender. However, Middendorf v. Henry, 425 U.S. 25 (1976), the Supreme Court held that a Summary Court-Martial was not an "adversary proceeding" nor was it a "criminal prosecution for the purpose of the Sixth Amendment." These conclusions raise concerns regarding the relationship between summary court-martial proceedings and the sex offender registration/notification requirements imposed by the statute.

<sup>19</sup> As discussed later, however, the more complete Air Force policy has not ensured required sex offender notifications.

<sup>20</sup> NAVPERSCOM memorandum, "Notice of Release of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," 5800, Ser 84/078, April 28, 2000. As mentioned previously in the Background section of this report, we identified the re-issuance during our actions on a complaint received from a Police Detective in San Diego, California. In addition, during our fieldwork for this evaluation, we found that one large Navy confinement facility was still using the 1999 memorandum policy to guide its notifications.

The Corrections Section, Headquarters, Marine Corps, distributed Marine Administrative (MARADMIN) 054/99, effective February 11, 1999, directing Marine Corps confinement facilities to implement Section 115(a)(8), the CJS Act.<sup>21</sup> However, the MARADMIN did not include specific guidance for implementation, but merely stated an expectation that SECNAV would establish procedures necessary to comply with statutory notification requirements. Individual Marine Corps confinement facilities, therefore, were left to develop their own procedures and processes for meeting the requirements.

The Army had preexisting guidance requiring inmate interviews to ensure compliance with applicable State laws concerning violent or sex offender registration requirements.<sup>22</sup> This guidance, however, did not address other aspects of the relevant law or DoD guidance. See the chart comparing DoD and Service guidance at Appendix D.

## Notifications

The following table shows the extent to which DoD was meeting its sex offender notification requirements in our random sample.

**Table B**  
**Required and Actual Notifications for**  
**Sex Offenders Released From or Not Sentenced to Confinement**

	Army	Navy	Air Force	Marine Corps	<b>Total</b>	
					No.	%
<b>Offenders with Notification Requirement</b>	19	26	29	23	97	100.0
<b>Offender Acknowledgement*</b>	11	18	10	8	47	48.4
<b>State Law Enforcement Official Notified</b>	0	18	7	5	30	30.9
<b>Local Law Enforcement Official Notified</b>	2	9	9	4	24	24.7
<b>State Registry Official Notified</b>	10	17	7	8	42	43.3

- \* Numbers do not include one inmate at an Army prison and one inmate at a Marine Corps prison who were still confined, but who had already signed the acknowledgement. Numbers do include acknowledgements that were completed and witnessed, but the convicted sex offender refused to sign the form.

<sup>21</sup> The MARADMIN referenced a memorandum dated December 23, 1998, from ASD (FMP) to the Service Secretaries and Defense Agency Directors, Subject: Notice of Release of Military Offenders Convicted of Sex Offenses and Crimes Against Minors.

<sup>22</sup> Army Regulation (AR) 190-47, “The Army Corrections System,” August 15, 1996, paragraph 8-27c.

As can be seen in Table B, although the rates varied from Service to Service and by notification type, overall DoD met its sex offender notification requirements in less than half of our sample cases. Local law enforcement officials were notified only 24.7 percent of the time.

## Acknowledgement Documentation

DoD guidance requires a military sex offender to sign documentation acknowledging that the Service has advised the offender about registration requirements. The guidance also requires the Service to maintain this document in a permanent file (see Appendix D). The Services, however, are generally not meeting these requirements.

At the time of our fieldwork, neither the Army nor the Marine Corps had issued guidance on storing or retaining sex offender acknowledgement documents.<sup>23</sup> In the Navy, Bureau of Naval Personnel (BUPERS) guidance requires permanently filing the acknowledgement document in the sex offender's Correctional Treatment File. We found the original, signed documentation (DD Form 2791-1, "Prisoner's Acknowledgement of Sex Offender Registration Requirements") for nearly all (17 of 18) sex offenders released from Navy confinement facilities. The acknowledgements, however, were stacked on bookshelves at the confinement facilities because the staffs did not know what to do with the documents.

The Air Force requires filing the original, signed DD Form 2791-1 in the sex offender's permanent personnel record.<sup>24</sup> We located five original, signed DD Forms 2791-1, two of which were in the offenders' permanent personnel records. We also located one *copy* of a signed DD Form 2791-1 in a sixth offender's permanent personnel record. Acknowledgement documentation for the remaining four offenders (see Table B above), however, were not filed in the permanent personnel records in accordance with policy.

## Notification Timeliness

The DoD guidance requires notifying State and local officials at least 5 days before releasing a sex offender from confinement. The Federal Bureau of Prisons has a 5-day standard for such notifications,<sup>25</sup> and the law directed the Secretary of Defense to

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<sup>23</sup> Some Army and Marine Corps confinement facilities that we visited were retaining the original, signed acknowledgement documents (for seven offenders released from Army confinement and six offenders released from Marine Corps confinement), but the staffs were unsure what to do with these documents.

<sup>24</sup> For all Air Force personnel in our sample who were subsequently discharged from the Service, we also reviewed their permanent personnel record on file at the Military Personnel Records Center in St Louis, Missouri. We found one original DD Form 2791-1 among the 18 personnel records we searched at the records center. One record could not be located at all, and there was no DD Form 2791-1 original or copy in the other 16 records. The one original that we found is included in our reporting.

<sup>25</sup> Pub. L. 105-119, Title I, §115(a)(8)(A)(iv) codified at 18 U.S.C. § 4042(c)(2) *specifying notice required upon release of a "sex offender."* See also Pub. L. 103-322, Title II, Subtitle D, §20417(5), codified, with amendments, at 18 U.S.C. §4042 (b)(1) *specifying notice required upon release of a prisoner in general.*

follow the Federal Bureau of Prisons standards when practicable.<sup>26</sup> There is no DoD timeliness standard for notifications for sex offenders who are convicted, but not confined.

Seven sex offenders in our sample were not confined.<sup>27</sup> In six cases, we did not locate any evidence of a notification. In the seventh case, notifications were made, but they were approximately two years after the conviction and after we announced our visit to the confinement facility. Similarly, 15 sex offenders were convicted overseas and were either not confined or were released from confinement overseas. Partial notifications, consisting of the prisoner's acknowledgement and notice to the State registry official, were made in one case. Required notifications were not initiated in the remaining 14 cases.

The following table shows the extent to which notifications in our sample cases were timely for sex offenders released from confinement.<sup>28</sup>

**Table C**  
**Notices to State and Local Officials**  
**Compliance with Requirement to Notify 5-days Before Release**

	Army	Navy	Air Force	Marine Corps	Total	
					No.	%
<b>Sex Offenders with Notification Requirements*</b>	18	24	26	22	90	100.0
<b>Sex Offenders Where All Notifications Met 5 Day Requirement.</b>	0	5	3	1	9	10.0

\* Figures include three prisoners released from Army confinement overseas, three prisoner's released from Air Force confinement overseas, and nine prisoners released from Marine Corps confinement overseas and excludes those not sentenced to confinement.

As can be determined from Table C, the Services did not comply with the 5-day timeliness requirement in 90 percent of the sample cases.

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<sup>26</sup> Pub. L. 105-119, Title I, §115(a)(8)(C)(iii) specifying notice required upon release of a military "sex offender." See also, Pub. L. 103-160, Title V, Subtitle E, §552(a) specifying notice required upon release of a military prisoner in general."

<sup>27</sup> This includes one person who was supposed to be confined, but for a confusing array of circumstances, was not confined.

<sup>28</sup> Neither DoD nor the individual Services established a standard (e.g., certified mail date, return receipt requested date, or fax confirmation date) for measuring compliance. We based our analysis on the actual notification document date as compared to the prisoner release date.

## **Verification Systems**

DoD guidance required the Services to establish systems to verify that required sex offender notifications were actually made. None of the Services, however, have established such a system.

## **Training**

The Navy is the only Service that has adopted formal training to address sex offender notification requirements. The Navy's Corrections Management Course familiarizes Navy corrections supervisors with the requirements. The training course, however, only addresses sex offenders convicted at Special or General Courts-Martial and sentenced to confinement. The lesson plan does not mention Summary Courts-Martial or sex offenders who are not confined.

## **Management Oversight**

The Services have little organized oversight for their sex offender notification processes. At each of the 29 military correctional facilities that we visited or contacted during our evaluation, we asked about the existence of an oversight review, whether an outside review or a self-inspection.

We determined that there was no oversight review at Navy or Marine Corps confinement facilities.

The Army's technical assistance visit (TAV) program includes one review standard, entitled Sex Offender Registration Counseling, which is to examine whether "...each inmate is interviewed to ensure compliance with applicable State laws concerning violent or sex offender registration requirements...."<sup>29</sup> We located results from this standard at two (one in the Continental United States and one overseas) of the five Army confinement facilities contacted during this evaluation. The results indicated that both facilities were in compliance. However, the TAV for the overseas facility included a notation that "...the nature of the facility's operation precludes it from displaying practice." We were unable to determine what this language meant specifically, but three sex offenders included in our sample were released from this facility and were not notified of their obligation to register.

One Air Force confinement facility that we visited had a local confinement facility self-inspection checklist accompanying a self-inspection report dated February 9, 2001. The checklist referred to sex offender notifications and the report indicated that the facility was in compliance. The checklist, however, only referred to offender notification, not notifications to State and local officials. For the one offender in our sample who was confined at this facility, the facility notified the offender in writing that

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<sup>29</sup> This standard is based on AR 190-47, "The Army Corrections System," August 15, 1996, paragraph 8-27c, published before the CJSRA required notifications covering sex offenders convicted at courts-martial.

he was obligated to register as a sex offender. The facility also sent notices to local law enforcement in the area where the sex offender expected to reside after confinement. These notifications occurred in 1999. We did not find any further evidence of internal or external inspections or oversight reviews at Air Force confinement facilities.

## Facility Operating Instructions

Only 7 (24 percent) of the 29 confinement facilities that we visited or contacted during the evaluation had facility operating instructions (OI) addressing the sex offender notification program, as shown in the table below.

**Table D**  
**Service Confinement Facilities**  
**With Operating Instructions Covering Sex Offender Notifications**

	<b>Army</b>	<b>Navy</b>	<b>Air Force</b>	<b>USMC</b>	<b>Total</b>
<b>Visited /Contacted</b>	5	3	16	5	29
<b>Coverage in Facility OI</b>	3 (60%)	1 (33%)	2 (13%)	1 (20%)	7(24%)

## Conclusions

The DoD guidance implemented the sex offender notification requirements in the Wetterling Act and the CJSA and should have been adequate for Service implementation, but for specific guidance regarding Summary Courts-Martial. The Services, however, did not fully implement the DoD guidance and generally are not satisfying the statutory notification requirements for military sex offenders. Some representatives at military confinement facilities indicated that they were unaware of the requirements. Others were unsure how the requirements applied to prisoners convicted overseas, or, due to language in the Report of Results of Trial<sup>30</sup> and/or Confinement Order, did not recognize the offense as a covered offense requiring notifications.

Service-wide guidance, management oversight, and an effective process for verifying required notifications would significantly improve the DoD sex offender notification program. Since courts-martial results normally determine notification requirements, each report of trial should include a statement addressing whether sex offender notifications are required. These reports would then constitute timely alerts for the confinement facility, the sex offender, and others involved in the process, including the offender's legal representative, when the conviction is for a covered offense. These reports would also assist in determining notification requirements for an offender with a

<sup>30</sup> Rules for Courts-Martial (R.C.M.) 1101(a), Manual For Courts-Martial, United States (2000 Edition), requires the trial counsel to promptly prepare a report of the results of trial informing the commander, convening authority, and confinement facility, if confinement is adjudged, of the findings and sentence. The Military Departments' Judge Advocates General have issued written guidance and formats for these reports. R.C.M. 1304(b)(2)(F)(v) and (vi) impose a similar responsibility on the Summary Court-Martial.

prior sex offense conviction who is subsequently convicted and confined for a non-covered offense. While preparing for a court-martial, we assume the trial counsel would identify other crimes for which the defendant was convicted. The trial counsel could then describe in the report of the results of trial the prior convictions for a covered offense that require notifications when the person is released from confinement. Although these cases, involving a prior conviction for a covered offense, will be limited in number, there must be adequate policy, procedures, and management to ensure compliance with requirements when these cases do occur.

## **Recommendations, Management Comments and Evaluation Response**

**A.1. We recommend that the Military Departments revise and reissue their policies on military sex offender notifications, ensuring the policies are consistent with DoD policy and specifically addressing notification requirements for:**

- a. military sex offenders who are convicted by courts-martial and not sentenced to confinement;**
- b. military offenders with prior sex offender convictions who are currently being released from confinement for non-covered offenses; and**
- c. military sex offenders convicted outside the United States and either confined outside the United States or not confined as a result of the conviction.**

**Army Comments.** The Army concurred and reported that it will revise Army Regulation (AR) 190-45, “Law Enforcement Reporting,” to incorporate all DoD criteria related to sex offender notifications. According to the Army, the revisions will emphasize the notification requirements for military sex offenders who are (1) convicted by courts-martial and not sentenced to confinement; (2) currently being released from confinement for non-covered offenses; and (3) convicted outside the United States and either confined outside the United States or not confined as a result of the conviction. The Army also advised that it will revise its personnel and military justice policy and processes to identify soldiers convicted of covered sex offenses and assigned to Army confinement facilities and/or to Army installations and units. In turn, Army automated personnel systems will utilize a unique code to identify and track these soldiers, and installation provost marshals will ensure they are notified that they must complete the sex offender registration process with appropriate State and local agencies.

In addition, the Army recommended that this report include annotations recognizing:

- sex offender notification is merely one of the numerous Federal notification and reporting statutes DoD components have been required to implement;

- the magnitude and variance in different State laws the DoD components were required to meet in implementing these statutes; and
- the substantial resource implications associated with implementing these notification and reporting statutes.

**Evaluation Response.** The Army comments are responsive. In commenting on the final report, the Army should include an estimated date for completing the policy revisions described above.

With respect to the report annotations that the Army requested to recognize the substantial resources involved in Federal notification statutes, the full text of the Army comments can be found at Appendix K-2. Our evaluation did not include notification and reporting statutes other than the ones specifically addressed in this report. We also did not assess specifically the resources involved in the Federal notification requirements addressed in this report. Accordingly, we cannot comment specifically on program resources. We note, however, that the program offices and individuals visited or contacted during this evaluation did not indicate that their deficient notifications were due to inadequate resources.

**Navy Comments.** The Navy concurred, advising that it will revise SECNAV Instruction 5800.14, "Notice of Military Offenders Convicted of Sex Offenses or Crimes Against Minors" to establish policy specifically addressing the notification requirements in this recommendation. The Navy estimated that it will complete the revisions by September 30, 2002. In its comments, the Navy also indicated that DoD should provide policy guidance concerning military members convicted of relevant sex crimes in foreign courts.

**Evaluation Response.** The Navy comments are responsive. We request that the Navy provide us with a copy of revised SECNAV Instruction 5800.14 upon completion. With respect to convictions in foreign courts, that issue was outside the scope of our evaluation. However, the law establishing DoD sex offender notification requirements appears to limit DoD responsibilities to courts-martial convictions.

**Air Force Comments.** The Air Force concurred, advising that it will change its regulatory guidance in AFI 31-205, "The Air Force Corrections System," to address this recommendation. The Air Force also advised that its revised guidance will cover military sex offenders convicted by courts-martial and not sentenced to confinement; military offenders with prior sex offender convictions being released from confinement for non-covered offenses, and military sex offenders convicted outside the United States and either confined outside the United States or not confined as a result of the conviction. The Air Force estimated that it would complete the revisions during July 2002.

**Evaluation Response.** The Air Force comments are responsive. We request that the Air Force provide us a copy of revised AFI 31-205 upon completion.

**A.2. We recommend the Military Departments establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement.**

**Army Comments.** The Army concurred and in a forthcoming revision of AR 190-45 will impose time requirements and responsibility for completing notifications involving military sex offenders convicted by courts-martial but not sentenced to confinement.

**Evaluation Comments.** The Army comments are responsive. In responding to the final report, the Army should establish an estimated date of completion and provide a copy of the revised policy.

**Navy Comments.** The Navy concurred, but pointed out that SECNAV Instruction 5800.14 currently requires the Naval Criminal Investigative Service (NCIS) to provide notifications within 15 days for military sex offenders not confined.

**Evaluation Comments.** We were aware of the SECNAV Instruction 5800.14 requirements, which provide that the convening authority or designee must notify NCIS “immediately” when a sex offender is convicted but not sentenced to confinement, and then allow NCIS an additional 15 days to send out the notification form. The “immediately” requirement is not sufficiently specific to be meaningful. Further, the 15 days then allotted for NCIS to send out the notification form does not reflect the sense of urgency inherent in the overall requirement that correctional facilities complete notifications 5 days before releasing an inmate from confinement. The Navy should revise its current policy to include a specific timeframe for the convening authority notifications and substantially accelerate the standard for NCIS notifications. Navy comments on the final report should address these issues and include an estimated date for completion.

**Air Force Comments.** The Air Force concurred, advising that a revised AFI 31-205, which will be published by the end of July 2002, will include new guidance providing “[o]nce notified of the conviction by SJA [Staff Judge Advocate], the [confinement] facility shall notify the agencies immediately, not to exceed 24 hours.”

**Evaluation Response.** We commend the 24-hour notification time that the Air Force intends to specify for confinement facilities. However, these notifications cannot occur until after the SJA notifications, and the comments do not indicate that the Air Force intends to establish a time requirement for those notifications. In this regard, we note that Paragraph 12.15, AFI 51-201, “Administration of Military Justice,” requires the SJA to notify the Security Forces when a sex offender is not ordered to post trial confinement. The policy, however, does not specify timing for such a notification. The revised Air Force policy should include time requirements for these SJA notifications. Air Force comments on the final report should address this issue and include an estimated date for completion.

**A.3. We recommend that the Military Departments adopt systems, with appropriate management oversight mechanisms, to track their sex offender notifications and ensure compliance with Federal laws requiring notifications for military sex offenders.**

**Army Comments.** The Army concurred, advising that revised AR 190-45 will provide for a system to ensure compliance with military sex offender notification requirements, and track the sex offender notifications. Additionally, the Army pointed out that in January 2002, it established a Law Enforcement and Policy Oversight Section (a Section Chief and one action officer) within the Security, Force Protection, and Law Enforcement Division (G-3, Army Headquarters) to establish clear, coherent policies compliant with DoD-mandated criteria and oversee Army-wide compliance with all Federal notification requirements.

**Evaluation Response.** The Army comments are responsive. In responding to the final report, the Army should provide an estimated completion date for the AR 190-45 revisions. Upon completion, the Army should also send us a copy of the revised policy.

**Navy Comments.** The Navy concurred and advised that it is revising SECNAV Instruction 5800.14 to include a mechanism for tracking sex offender notifications. The Navy also advised that it is incorporating its revised policy in its Confinement Facility Inspection Guides and the Brig Managers training course, and expects to complete the revisions by the end of October 2002

**Evaluation Response.** The Navy comments are responsive. We request that the Navy send us copies of the revised SECNAV Instruction, inspection guides, and Brig Managers Course when completed.

**Air Force Comments.** The Air Force concurred. According to the Air Force comments, the Headquarters, Air Force Security Forces Center (HQ AFSFC), has established a program manager to oversee the Sex Offender Notification Program. This program manager, in conjunction with Air Force legal offices, will ensure that documents are completed properly and forwarded to the appropriate locations. HQ AFSFC has also developed: (1) comprehensive checklists for Air Force units to use in self-inspections, and (2) an accreditation program for Major Commands (MAJCOM) and higher headquarters elements to use in inspecting and accrediting confinement facilities every 3 years, at minimum. The Air Force indicated that its accreditation inspections will involve a detailed review of both sex offender and victim/witness notification programs. The Air Force advised that it would implement the new accreditation program after a revised AFI 31-205 is published, which is expected by the end of July 2002.

**Evaluation Response.** The Air Force comments are responsive. We request that the Air Force send us copies of the revised regulatory guidance, checklists, and accreditation program upon completion.

**A.4. We recommend that the Military Departments revise their current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required.**

**Army Comments.** The Army concurred.<sup>31</sup> In addition to revising its specific AR 27-10 guidance on preparing Reports of the Results of Trial, the Army advised that it has additional pending revisions to this regulation to require extensive coordination between the military trial counsel, the installation provost marshal, the confinement facility, and the Army Crimes Records Center. According to the Army, this coordination process will include several different mechanisms to ensure compliance with DoD and Army sex offender notification requirements.

**Evaluation Comments.** The Army comments are responsive. In responding to the final report, the Army should provide an estimated completion date for these policy revisions. Upon their completion, the Army should also send us a copy.

**Navy Comments.** The Navy concurred.<sup>32</sup> According to the Navy comments, within 60 days after Reports of Results of Trial are changed to include sex offender information, the corrections system can develop policy and guidance to capture sex offender notification requirements based on the Reports of Results of Trial.

**Evaluation Response.** The Navy comments are responsive. In commenting on the final report, the Navy should include an estimated completion date for changing its Report of Results of Trial, as well as for the subsequent revisions to corrections facility policy and guidance to capture sex offender notification requirements based on the Reports of Results of Trial.

**Air Force Comments.** The Air Force concurred. Although indicating the changes will need to be coordinated fully within the Office of the Air Force Judge Advocate General, the Air Force estimated that it will complete the changes by the end of October 2002.

**Evaluation Response.** The Air Force comments are responsive. We request that the Air Force send us a copy of its revised policy when completed.

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<sup>31</sup> While processing the Army comments, we found the response to this recommendation a little vague. We contacted the report's point of contact in the Army General Counsel's office, who assured us the Army concurred in the recommended changes to the Report of Results of Trial.

<sup>32</sup> Although concurring with the recommendation, the Navy comments indicated that changing the Report of Results of Trial was beyond the Department of the Navy's scope, which is clearly incorrect. While processing the comments, we discussed this issue with the official Navy contact for the report. The contact agreed the comment was incorrect and advised that the stated concurrence indicated the Navy's intention to implement our recommendation.

**A.5. We recommend that the Military Departments complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.**

**Army Comments.** The Army concurred; however, for those sex offenders no longer under military jurisdiction the Army will only make “good-faith effort” notification attempts to the sex offenders’ last known or reported address. If the sex offender is located, notifications will be completed in accordance with all applicable DoD and Army policies.

**Evaluation Comments.** We understand the comments to mean that for those sex offenders no longer under military jurisdiction, the Army does not intend to meet its statutory notification requirements unless it locates the sex offenders at their last known or reported addresses. Although we recognize the difficulty that the Army might now encounter in locating sex offenders no longer under a Service’s jurisdiction, the requirements remain and are unaltered by the current situation. In commenting on the final report, therefore, the Army should address how it intends to more effectively satisfy these notification requirements. The Army should also provide an estimated date for completing previously unfulfilled sex offender notifications and identify its focal point for those notification efforts.

**Navy Comments.** The Navy concurred. To begin resolving delinquent sex offender notifications, the Navy advised that it now has a collaborative effort between the Judge Advocate General, the Naval Criminal Investigative Service, and PERS-84 (Navy corrections management) to develop and release a new NAVADMIN.<sup>33</sup> According to the Navy, the new NAVADMIN will be designed to ensure that statutorily required notifications are completed for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998. The NAVADMIN will be released by September 30, 2002.

**Evaluation Comments.** The Navy comments are responsive. In commenting on the final report, the Navy should include an estimated completion date for complying with the statutory notification requirements for all currently delinquent sex offender notifications and identify its focal point for those notification efforts.

**Air Force Comments.** The Air Force concurred and advised that it has (1) sent letters to all organizations where a sex offender was confined or convicted and not confined, and (2) conducted national agency checks to help determine the whereabouts of the sex offenders. The Air Force reported a June 15, 2002, estimated completion date for actions on this recommendation.

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<sup>33</sup> OPNAV Instruction 5000.25H, “Authority to Release NAVOPS, NAVADMINS, and Routine Messages From the OPNAV Staff,” December 10, 2001, explained that NAVADMINS are messages used to announce urgent changes to rules, regulations, or directives to comply with time limits imposed by higher authority.

**Evaluation Response.** The Air Force comments are responsive. In commenting on the final report, the Air Force should include an estimated completion date for complying with the statutory notification requirements for all currently delinquent sex offender notifications and identify its focal point for those notification efforts.

**A.6. We recommend that the Under Secretary of Defense (Personnel and Readiness), in coordination with the Office of the General Counsel, DoD, issue guidance on whether a person sentenced by a Summary Court-Martial for a covered offense requires sex offender notifications.**

**USD(P&R) Comments.** The Deputy Under Secretary of Defense (Program Integration) (DUSD(PI)), commenting for the USD(P&R), concurred with the recommendation and advised that the new guidance will be issued. In this regard, the official USD(P&R) contact for the report has advised us in an e-mail that the issues have been coordinated with the Office of the General Counsel, DoD, and the next revision to DoDI 1325.7 will limit sex offender notification requirements to convictions at General or Special Courts-Martial.

**Evaluation Response.** The USD(P&R) comments are responsive. In commenting on the final report, the USD(P&R) should provide an estimated completion date for publishing the revised DoDI 1325.7.

## **Victim and Witness Notification**

**Finding B. Military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and do not always satisfy those requirements even when they receive the documentation.**

### **DoD Guidance**

As described in Appendix E and shown in the flowchart at Appendix F, DoD guidance requires confinement facilities to notify victims and witnesses when an inmate's status changes, if the victim or witness requested notification. The Trial Counsel<sup>34</sup> is required to complete DD Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status" (Appendix G) for each military member convicted by court-martial and sentenced to confinement. The form alerts the confinement facility as to whether victims or witnesses exist, and whether the victims or witnesses want notifications when a prisoner's status changes. The form also contains information on how to contact victims and witnesses who request notification. The DoD guidance requires the Services to establish policies and procedures for implementing the Victim and Witness Assistance Program, including procedures to ensure notifications to victims and witnesses.

### **Service Guidance**

As described in Appendix E, each Service has issued policies and procedures as provided in DoD guidance.

### **DD Form 2704**

To satisfy victim and witness notification requirements, it is essential that the confinement facility receive a completed DD Form 2704 when receiving a new prison inmate. Otherwise, the confinement facility will not know that a victim or witness has requested notifications, or have the contact information necessary to complete notifications.

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<sup>34</sup> A judge advocate assigned as prosecutor in a particular court-martial case.

Our random sample included 126 offenders sentenced to confinement, including 97 offenders convicted of covered offenses.<sup>35</sup> Not all of the DD Forms 2704 were available for the inmates in our sample.<sup>36</sup>

**Table E**  
**Number of Offenders in Our Sample Confined**  
**Compared to**  
**Number of DD Forms 2704 Located**

Sample Inmate's Service	Confinement Facility Custodian									
	Army		Navy		Air Force		Marine Corps		Total	
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)
<b>Army</b>	23	21	1	1	2	2	2	0	28	24
<b>Navy</b>	0	0	23	21	0	0	0	0	23	21
<b>Air Force</b>	6	5	8	7	26	23	1	0	41	35
<b>Marine Corps</b>	0	0	6	5	0	0	28	10	34	15
<b>Total</b>	29	26	38	34	28	25	32	10	126	95
<b>%</b>										75%

(1) Number of inmates

(2) Number of DD Forms 2704 located

As can be seen in Table E, the number of DD Forms 2704 averaged 75 percent for the Services overall.<sup>37</sup> Additionally, we were told repeatedly that obtaining a DD Form 2704 for an inmate often requires repeated tracing actions to the Trial Counsel. Most confinement facilities, however, did not record their tracing actions nor the date on which they received a DD Form 2704. We then asked for information on the number of adjudged (sentenced by courts-martial) inmates in the confinement facility, and the number for whom the facility did not have a DD Form 2704.<sup>38</sup> Army facilities reported 899 adjudged inmates, 139 (16 percent) without a DD Form 2704. Navy facilities reported 646 adjudged inmates, 122 (19 percent) without the form. Air Force facilities reported 69 adjudged inmates, 3 (4 percent) without a DD Form 2704. Marine Corps facilities reported 371 adjudged inmates, 169 (46 percent) without the form. We did not

<sup>35</sup> This number includes three offenders sentenced to confinement, but not confined in a military confinement facility. In addition to military courts-martial convictions, two had State court convictions and were confined in State correctional facilities. The third, due to a confusing array of circumstances, was discharged from Service before serving confinement. In each of these three cases, we checked with the Trial Counsel's office to determine whether a DD Form 2704 or equivalent was completed and, if so, how it was processed to the confinement facility. The forms had not been completed.

<sup>36</sup> If a facility could not locate a DD Form 2704 for a particular inmate, but otherwise demonstrated notifications with respect to the inmate, we credited the facility as having DD Form 2704 for our purposes.

<sup>37</sup> We note that this low percentage for the Services is significantly skewed by the Marine Corps' compliance rate.

<sup>38</sup> We excluded inmates confined before 1995, because these confinements preceded publication of the DoD guidance on victim and witness notifications.

validate these numbers nor attempt to track missing DD Forms 2704 to determine if they were ever sent to the confinement facility. However, this information and data from our sample cases show that confinement facilities frequently do not have required DD Forms 2704 for their inmates. This has a significant impact on confinement facilities meeting their victim and witness notification requirements.<sup>39</sup>

## Notifications

As indicated in Appendices E and F, if they request notifications, victims and witnesses are entitled to notifications when an inmate's status changes. These notifications begin (initial notification) when an inmate enters a correctional facility and continue through the inmate's final release from confinement (final notification). In reviewing actual notifications to victims and witnesses in our sample cases, we found that initial notifications were completed 76 percent of the time, when the confinement facility had a DD Form 2704 and knew a victim or witness had requested notification. This information is shown in the following table.

**Table F**  
**Initial Victim and Witness Notifications**  
**(When Confinement Facility Knew**  
**Notification Had Been Requested)**

	Custodial Agency				
	Army	Navy	Air Force	Marine Corps	Total
<b>No. of Offenders</b>	21	20	24	7	72
<b>No. of Offenders With Initial Notifications</b>	13	19	19	4	55 (76%)

We found similar results for final notifications. Ninety-nine offenders in our sample had been released from confinement. In 55 of these cases, the confinement facility had received a DD Form 2704 or otherwise determined that at least one victim or witness had requested notification. As can be seen in the following table, when the confinement facilities knew a victim or witness had requested notification, they completed final notifications to victims and witnesses before the inmates were released in 85 percent of the cases.

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<sup>39</sup> This evaluation focused on confinement facility notifications. However, the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight has also written to The Judge Advocate General of each Military Department, as well as the Staff Judge Advocate to the Commandant of the Marine Corps, encouraging greater compliance with DD Form 2704 requirements and increased attention to forwarding completed DD Forms 2704 to confinement facilities. (See Appendix I)

**Table G**  
**Final Victim and Witness Notifications in Sample**  
**Completed Prior to Inmate Release**  
**(When Confinement Facility Knew Notification Had Been Requested)**

	Custodial Agency				
	Army	Navy	Air Force	Marine Corps	Total
No. of Offenders	14	12	24	5	55
Final Notifications*	14	10	19	4	47 (85%)

\* Does not include four final notifications (two Navy, one Air Force and one Marine Corps) initiated after the inmate was released

Furthermore, the number of non-notifications in our sample cases could be higher because, as shown in Table E, confinement facilities did not receive DD Form 2704 in about 25 percent of cases. Clearly, victims and witnesses who may have requested notification in these cases were not notified because the confinement facility did not even know about them.

### Offenders Still Confined

Twenty-five offenders in our sample were still confined. The confinement facilities had DD Forms 2704 for 21 (84 percent) of these offenders. Victims or witnesses had requested notification in 17 (81 percent) of these cases, and the confinement facilities initiated notifications in 15 (88 percent) of those cases.<sup>40</sup>

### Program Reporting

The Army, Air Force, and Marine Corps require monthly up-channel reporting from each confinement facility. The Navy requires annual reporting. The individual Service data reporting requirements are similar and all involve only cases in which a victim and witness is known to have requested notification, e.g., the confinement facility has a DD Form 2704 for the inmate. None involves cases where the confinement facility has not received a DD Form 2704 and does *not* know whether victim or witness notifications were requested.

### Victim/Witness Personal Data

DoD and the Services exempt victim and witness information from release under the Freedom of Information and Privacy Acts, to protect the individuals from possible retaliation. For the same reason, inmates and other unauthorized personnel may not have

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<sup>40</sup> Does not include one Army case where the Victim/Witness Coordinator had inactivated the victim/witness file for reasons not documented in the file. The current coordinator was new to the duties and could not explain the inactivation. We did not attempt to contact the victim.

access to victim or witness “identifying data.” The Army, Navy and Marine Corps confinement facilities included in our evaluation all restrict access to victim and witness data, limiting the access to the victim/witness coordinator, an alternate coordinator, and their chain-of-command supervisors. Army, Navy, and Marine Corps confinement facilities retain custody of victim and witness information. By Service regulation,<sup>41</sup> Navy and Marine Corps confinement personnel destroy victim and witness data 2 years after the inmate release date. The Army archives victim and witness information with the prisoner’s confinement records.<sup>42</sup>

The Air Force requires filing victim and witness notification documentation in the inmate’s CTF, but does not restrict access to the victim and witness coordinator, alternate, and supervisors.<sup>43</sup> At one confinement facility that we visited, for example, all 10 people assigned to the facility had access to the CTF and, therefore, the victim and witness personal data. Additionally, when the Air Force releases an inmate from confinement, the CTF (including victim and witness data) is sent to the inmate’s military unit for retention.<sup>44</sup> Although the victim and witness information is filed in a separate envelope in the CTF, we believe this practice detracts from assuring confidentiality to victims and witnesses and should be changed. The Air Force confinement community should retain victim and witness data and restrict access to individuals with a strict need-to-know.

## **Recommendations, Management Comments and Evaluation Response**

**B.1. The Military Departments take action to ensure that military confinement facilities receive a DD Form 2704, “Victim/Witness Certification and Election Concerning Inmate Status,” for each adjudged inmate entering a confinement facility. Actions should include:**

- a. routine confinement facility reporting that identifies (by name and confinement date) those adjudged inmates who were received without a DD Form 2704; and**
- b. procedures for confinement facilities to receive missing DD Forms 2704 immediately.**

**Army Comments.** The Army concurred and reported that in coordination with Office of the Judge Advocate General, Criminal Law Division, and the Security, Force Protection, and Law Enforcement Division of the G-3, Headquarters Department of the

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<sup>41</sup> BUPERS Instruction 5800.3, “Victim and Witness Program,” June 5, 2000, paragraph 12a(2), and MCO P5800.16A, “Marine Corps Manual for Legal Administration,” August 31, 1999, paragraph 6-7.3c.

<sup>42</sup> AR 190-47, “Army Corrections System,” August 15, 1996, paragraph 13.9.

<sup>43</sup> AFI 31-205, “The Air Force Corrections System, April 9, 2001, paragraphs, 3.2.24 through 3.2.5.2.

<sup>44</sup> Ibid, paragraph 5.5.1.

Army (HQDA), it has implemented measures to correct this issue. On February 22, 2002, HQDA published an Army-wide message requiring installations to submit to the Security, Force Protection, and Law Enforcement Division a completed DD Form 2704, *Victim/Witness Certification and Election Concerning Inmate Status*, as a precursor to the Division's assignment of confinement space to a new prisoner. The form then will be maintained centrally at HQDA with a copy furnished to the confinement facility. This process was designed to ensure that required documents were both in hand before a prisoner was accepted into confinement and readily available to confinement facility Victim/Witness Coordinators in the performance of their duty to inform victims and witnesses of changes in an inmate's status. The Army claims this requirement has been strictly enforced. In those cases where it has been impossible to complete the DD Form 2704 before initiation of confinement, written justification from the installation has been required to explain the deficiency. Army believes this will enable HQDA to track those adjudged prisoners admitted to confinement without a DD Form 2704, and will provide a mechanism to mandate eventual compliance. Further, the Army is working to ensure that DD Forms 2704 are completed, filed, and tracked for prisoners presently confined but for whom no DD Form 2704 can be located.

**Evaluation Response.** The Army comments are responsive. We note the process described is similar to the process currently in Army regulations. The added features that require receipt before confinement space can be assigned to a new prisoner and written justification when the form is impossible to obtain before confinement are impressive. In commenting on the final report, the Army should include an estimated completion date when regulatory guidance will be revised to incorporate these new features and provide copies of the revisions.

**Navy Comments.** The Navy concurred. BUPERS Instruction 5800.3, "Victim and Witness Assistance Program," January 5, 2000, will be revised to provide oversight and tracking of non-receipt of DD Form 2704 for all confinements. The estimated completion date was September 30, 2002. In the interim, PERS-84 (Navy corrections management) will publish a policy letter outlining a system of reporting and tracking non-receipt of DD Forms 2704, and procedures for resolving deficiencies. Estimated date for completion was July 31, 2002

**Evaluation Response.** The Navy comments are responsive. When completed, please provide copies of the relevant portions of the policy letter and instruction.

**Air Force Comments.** The Air Force concurred. Provisions that provide for confinement facilities reporting that identifies (by name and confinement date) those adjudged inmates who were received without a DD Form 2704, and procedures for confinement facilities to receive missing DD Forms 2704 immediately will be incorporated into a revision of AFI 31-205. The estimated date for completion was the end of July 2002.

**Evaluation Response.** The Air Force comments are responsive. When completed, please provide copies of the relevant revisions to AFI 31-205.

**B.2. The Air Force revise current policies and procedures to require confinement facilities to retain victim and witness data during and after inmate confinement, and restrict victim and witness data access to individuals with a strict need-to-know.**

**Air Force Comments.** The Air Force concurred and commented that this requirement was incorporated into AFI 31-205 published in April 2001.

**Evaluation Response.** The Air Force comments are not responsive. We note the current instruction and the March 1997 and June 1999 versions of the same Air Force instruction required the placement of the victim and witness envelope in the correctional treatment file (CTF). Our experience during this evaluation demonstrated that the CTF had broad access by correctional facility staff. Additionally, as required by AFI 31-205, and validated during our fieldwork, when an inmate was released, the CTF, which includes the victim witness envelope, was sent to the inmate's military unit. The Air Force should reconsider the assertion that AFI 31-205 requires confinement facilities to retain victim and witness data during and after inmate confinement, and to restrict victim and witness data access to individuals with a strict need-to-know. In commenting on the final report, if the Air Force revises current policies and procedures to require confinement facilities to retain victim and witness data during and after inmate confinement, and restrict victim and witness data access to individuals with a strict need-to-know, provide an estimated completion date and copies of revised policies.

## **Appendix A. Background on Federal Sex Offender Registration**

*(Extracted from U.S. Department of Justice, Office of Justice Programs, Proceedings of a Bureau of Justice Statistics and The National Consortium for Justice Information and Statistics conference, April 1998, vii-viii.)*

In October 1989, 11-year-old Jacob Wetterling bicycled with his brother and a friend to a store near his St. Joseph, Minnesota, home to rent a video. Ten months later, Houston real estate agent Pam Lychner prepared to show a vacant residence to a prospective buyer. In July 1994, Megan Kanka, age 7, accepted an invitation from a neighbor in Hamilton Township, New Jersey, to see his new puppy. As they went about their daily routines, Wetterling, Lychner and Kanka could not have known they were fated to become crime victims, or that their names would ultimately become synonymous with Federal laws mandating more stringent control of sex offenders.

Wetterling's ride home was interrupted by an armed man wearing a nylon mask who ordered the boy's companions to flee. Wetterling has not been seen since. Investigators later learned that, unbeknownst to local law enforcement, halfway houses in St. Joseph housed sex offenders after their release from prison. Wetterling's disappearance transformed his mother, Patty, a self-described "stay-at-home mom," into a tireless advocate for missing children. She was appointed to a governor's task force that recommended stronger sex offender registration requirements in Minnesota.

The more stringent requirements were subsequently implemented on a national basis when the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act<sup>1</sup> was included in the Federal Violent Crime Control and Law Enforcement Act of 1994.<sup>2</sup> The Wetterling Act required States to establish stringent registration programs for sex offenders — including lifelong registration for a subclass of offenders classified as sexual predators — by September 1997.

Awaiting Lychner at the vacant house was a twice-convicted felon who brutally assaulted the former flight attendant. Her life was saved when her husband arrived on the scene and interrupted the attack. The experience motivated Lychner to form Justice for All, a Texas-based victims' rights advocacy group that lobbies for tougher sentences for violent criminals.

U.S. Senators Phil Gramm of Texas and Joseph Biden of Delaware credited Lychner with helping to craft the language of a bill that established a national computer database to track sex offenders. The bill was named the Pam Lychner Sexual Offender Tracking and Identification Act of 1996<sup>3</sup> to honor the activist after she and her two daughters were killed in the explosion of TWA Flight 800 off the coast of Long Island,

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<sup>1</sup> Pub. L. 103-322, Title XVII, §170101, 108 Stat. 2038, codified, as amended at 42 U.S.C. §14071.

<sup>2</sup> Pub. L. 103-322, 108 Stat. 1796, codified, as amended, in scattered sections of Titles 18, 26 and 42.

<sup>3</sup> Pub. L. 104-236, §2(a), 110 Stat. 3093, codified, as amended, at 42 U.S.C. § 14072.

New York, in July 1996. The Lychner Act amended the Violent Crime Control and Law Enforcement Act of 1994, to require the Federal Bureau of Investigation (FBI) to establish the national offender database and to handle sex offender registration and notification in States unable to maintain “minimally sufficient” programs of their own. The Lychner Act compliance deadline was October 1999.

The neighbor who invited Megan Kanka to see his puppy was a twice-convicted pedophile who raped and murdered her, then dumped her body in a nearby park. Megan’s grieving parents said they never would have let their daughter travel their neighborhood freely if they had been alerted to the presence of a convicted sex offender living across the street from their residence. Congress passed the Federal version of “Megan’s Law,”<sup>4</sup> another amendment to the Violent Crime Control and Law Enforcement Act of 1994, in 1996. It required States to establish some form of community notification by September 1997.

The process of instituting a nationally consistent policy to control sex offenders is complex. One of the greatest challenges is the sheer magnitude of the problem. Recent figures show that, nationally, approximately 234,000 sex offenders are under the care, custody or control of corrections agencies — 60 percent under conditional supervision in the community — on any given day.

The FBI, directed by the Lychner Act to register sex offenders and to notify communities in States lacking “minimally sufficient” programs, used fugitive statistics from four California field divisions (San Diego, Los Angeles, San Francisco and Sacramento) and information on noncompliant sex offenders from the Departments of Justice and State to study the assignment’s impact on its resources. The study found that, if the FBI were responsible for administering California’s program, every agent working in the four divisions at the time of the study would have to be assigned full-time just to track down sex offenders who failed to register as required.

There are thorny legal issues to consider as well. Individuals subject to registration and notification programs have challenged the statutes on constitutional grounds, citing excessive punishment, lack of due process and invasion of privacy. The courts have generally upheld registration requirements, but several courts have struck down notification programs. Many observers believe the notification controversy will not be resolved until the U.S. Supreme Court settles the matter.

Designing an effective sex offender registration and notification program that can withstand legal challenges while meeting the needs of the community is difficult, especially within the relatively short time periods for compliance spelled out in the Federal statutes. States that failed to meet the statutes’ compliance deadlines risked losing 10 percent of their appropriation from the Federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which provides funding for State and local crime eradication efforts. The statutes allowed States experiencing difficulty in establishing programs to apply for a 2 - year, “good-faith-effort” deadline extension. Forty-two of the 56 States and territories covered by the statutes sought the extensions.

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<sup>4</sup> Pub. L. No. 104-145, §2, 110 Stat. 1345, codified at 42 U.S.C. § 14071(e).

## Appendix B. Conviction Offenses Under the Uniform Code Of Military Justice<sup>1</sup>

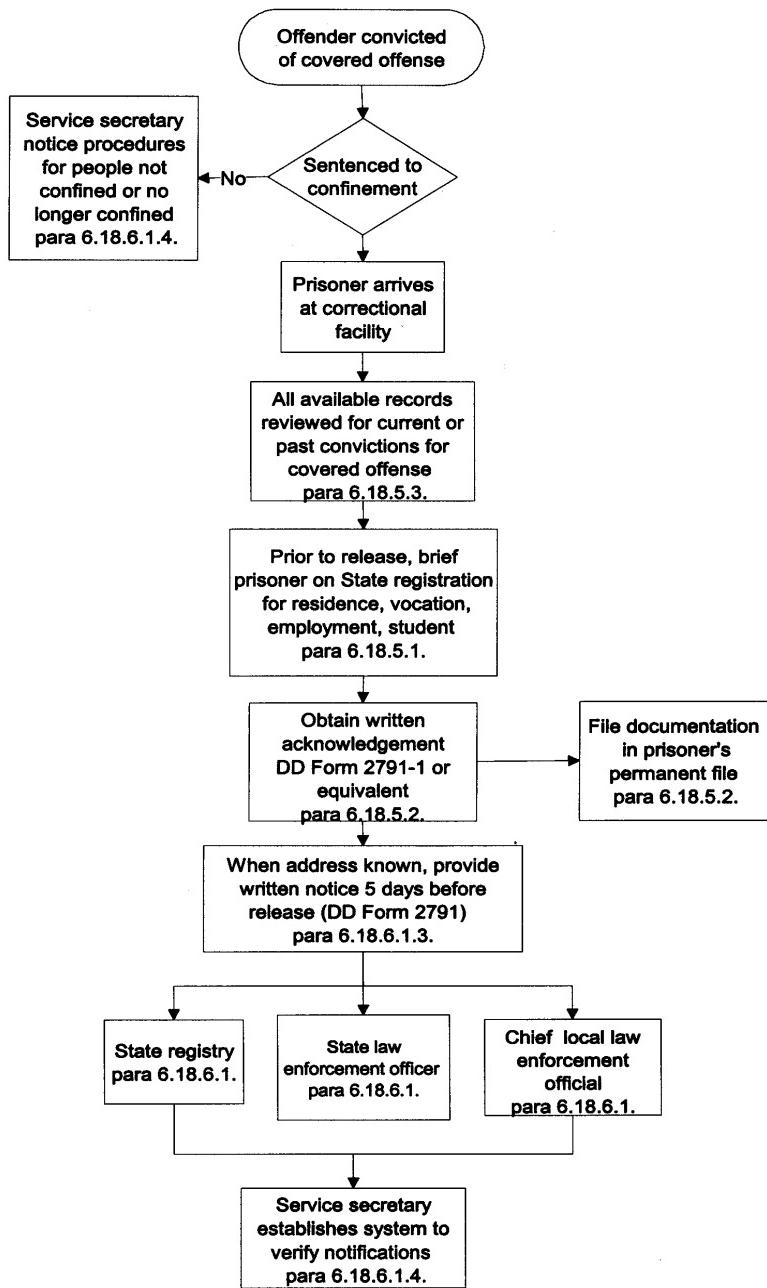
UCMJ Article	DIBRS* Code	UCMJ Offense
120	120A	Rape
120	120B1/2	Carnal Knowledge
125	125A	Forcible Sodomy
125	125B1/2	Sodomy of a Minor
133	133D	Conduct Unbecoming an Officer (involving any sexually violent offense or a criminal offense of a sexual nature against a Minor or kidnapping of a Minor)
134	134-B6	Prostitution Involving a Minor
134	134-C1	Indecent Assault
134	134-C4	Assault with Intent to Commit Rape
134	134-C6	Assault with Intent to Commit Sodomy
134	134-R1	Indecent Act with a Minor
134	134-R3	Indecent Language to a Minor
134	134-S1	Kidnapping of a Minor (by a person not parent)
134	134-Z	Pornography Involving a Minor
134	134-Z	Conduct Prejudicial to Good Order and Discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a Minor or kidnapping of a Minor)
134	134-Y2	Assimilative Crime Conviction (of a sexually violent offense or a criminal offense of a sexual nature against a Minor or kidnapping of a Minor)
80		Attempt (to commit any of the foregoing)
81		Conspiracy (to commit any of the foregoing)
82	082-a	Solicitation (to commit any of the foregoing)

\* Defense Incident-Based Reporting System

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<sup>1</sup> DoDI 1325.7, “Administration of Military Correctional Facilities and Clemency and Parole Authority,” July 17, 2001, Enclosure 27.

# Appendix C. Sex Offender Notification Process at Correctional Facilities (DoDI 1325.7)



## Appendix D. DoD vs. Service Policy on Sex Offender Notifications

DoD <sup>1</sup>	Air Force <sup>2</sup>	Navy <sup>3</sup>	Marine Corps <sup>4</sup>	Army <sup>5</sup>
On confinement, check if ever convicted of covered offense (6.18.5.3)*				
Before release, check if ever convicted of covered offense (6.18.6.1)	Confining offense only (3.2.6.5.1)	Confining offense from Special or General Courts-Martial (5a)	Confining offense only (3(A))	Confining offense only (8-27)
If covered-offense conviction, advise prisoner: - State registration requirements (6.18.5.1&3)	Confining offense only (3.2.6.5.1)	Confining offense only (5a)	Confining offense only (3(A))	Confining offense only (8-27)
- All States where lives, works, attends school, or has vocation (6.18.5.1)	(3.2.6.5.1)	(5b)	3(A)	
- Obtain prisoner acknowledgment of requirements (6.18.5.2)	(3.2.6.5.1.1)	(5b)	(3(B))	
- File acknowledgement in prisoner's permanent file (6.18.5.2)	(3.2.6.5.1.2)	(5b)	(3(B))	

<sup>1</sup> DoDI 1325.7.

<sup>2</sup> AFI 31-205. Note: When a person is convicted at courts-martial but not sentenced to confinement or will not return to confinement due to credit for pretrial confinement, AFI 51-201, "Administration of Military Justice," November 2, 1999, requires staff judge advocate to notify local Air Force security forces unit to initiate required sex offender notifications.

<sup>3</sup> NAVPERSCOM Memorandum, 5800 Ser 84/078, "Notice of Release of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," April 28, 2000.

<sup>4</sup> MARADMIN 054/99, "Notice of Release of Military Offenders Convicted of Sex Offenses and Crimes Against Minors."

<sup>5</sup> AR 190-47.

DoD <sup>1</sup>	Air Force <sup>2</sup>	Navy <sup>3</sup>	Marine Corps <sup>4</sup>	Army <sup>5</sup>
5 days before final release, separate notices to: (6.18.6.1.3)*	(3.2.6.5.2)	(5c)	(3(C))	
- Chief law enforcement officer in State where expected residence (6.18.6.1)	(3.2.6.5.2.1)	(5c(1))	(3(C))	
- Chief law enforcement officer in local jurisdiction where expected residence. (6.18.6.1)	X (3.2.6.5.2.2)	X (5c(2))	X (3(C))	
- State or local agency responsible for receiving sex offender registrations in area where expected residence (6.18.6.1)	(3.2.6.5.2.3)	(5c(3))	(3(C))	
Notices shall include: - Intended residence - Subject to registration - Criminal history - Offense requiring registration - Release restriction /conditions (6.18.6.1.2)	(3.2.6.5.1.1)	(5d)	(3(C))	
Establish system to verify notifications for convicted and confined, not confined, no longer confined (6.18.6.1.4)				

\*The parenthetical entries represent the paragraph citation in the referenced guidance

## Appendix E. DoD vs. Service Notification Policy—Inmate Status Changes

DoD <sup>1</sup>	Army	Navy	Air Force	Marine Corps
Service Secretary establish oversight procedures to ensure capability to deliver required services (5.2.10)	(18.6b-d) <sup>2</sup> (13-1) <sup>3</sup>	(9b(6)) <sup>4</sup> (8307) <sup>5</sup>	(7.17) <sup>6</sup>	(9b(6)) <sup>4</sup> (8307) <sup>5</sup>
Upon sentence to confine, trial counsel send DD Form 2704, to confinement facility (CF), and any victim/witness (6.4.2)	(18.14b(2)) <sup>2</sup>	(7d(2)) <sup>7</sup>	(7.13.2) <sup>6</sup>	(6006.7n) <sup>8</sup>
Upon post-trial confinement, obtain DD Form 2704 to determine notification requirements. (6.5.1)	(18.25a) <sup>2</sup> (13.2a-b) <sup>3</sup>	(5a) <sup>9</sup>	(7.13.4) <sup>6</sup> (3.2.2) <sup>10</sup>	(6006.3b) <sup>8</sup>
Notify inmate status changes via DD Form 2705 for: - clemency or parole hearings - transfer, escape, return - release, or death (6.5.4)	(18.25b-e) <sup>2</sup>	(Encl 9) <sup>7</sup> (5e(1-7)) <sup>9</sup>	(7.13.6) <sup>6</sup> (3.2.6) <sup>10</sup>	(8307) <sup>5</sup>

<sup>1</sup> DoDI 1030.2, “Victim and Witness Assistance Procedures,” December 23, 1994.

<sup>2</sup> AR 27-10, “Military Justice,” August 20 1999.

<sup>3</sup> AR 190-47, “The Army Corrections System,” August 15, 1996.

<sup>4</sup> SECNAVINST 5800.11A, “Victim and Witness Assistance Program,” June 16, 1995.

<sup>5</sup> SECNAVINST 1640.9B, “Department of the Navy Corrections Manual,” December 2, 1996.

<sup>6</sup> AFI 51-201, “Administration of Military Justice,” November 2, 1999.

<sup>7</sup> OPNAVINST 5800.7, “Victim and Witness Assistance Program,” April 30, 1996.

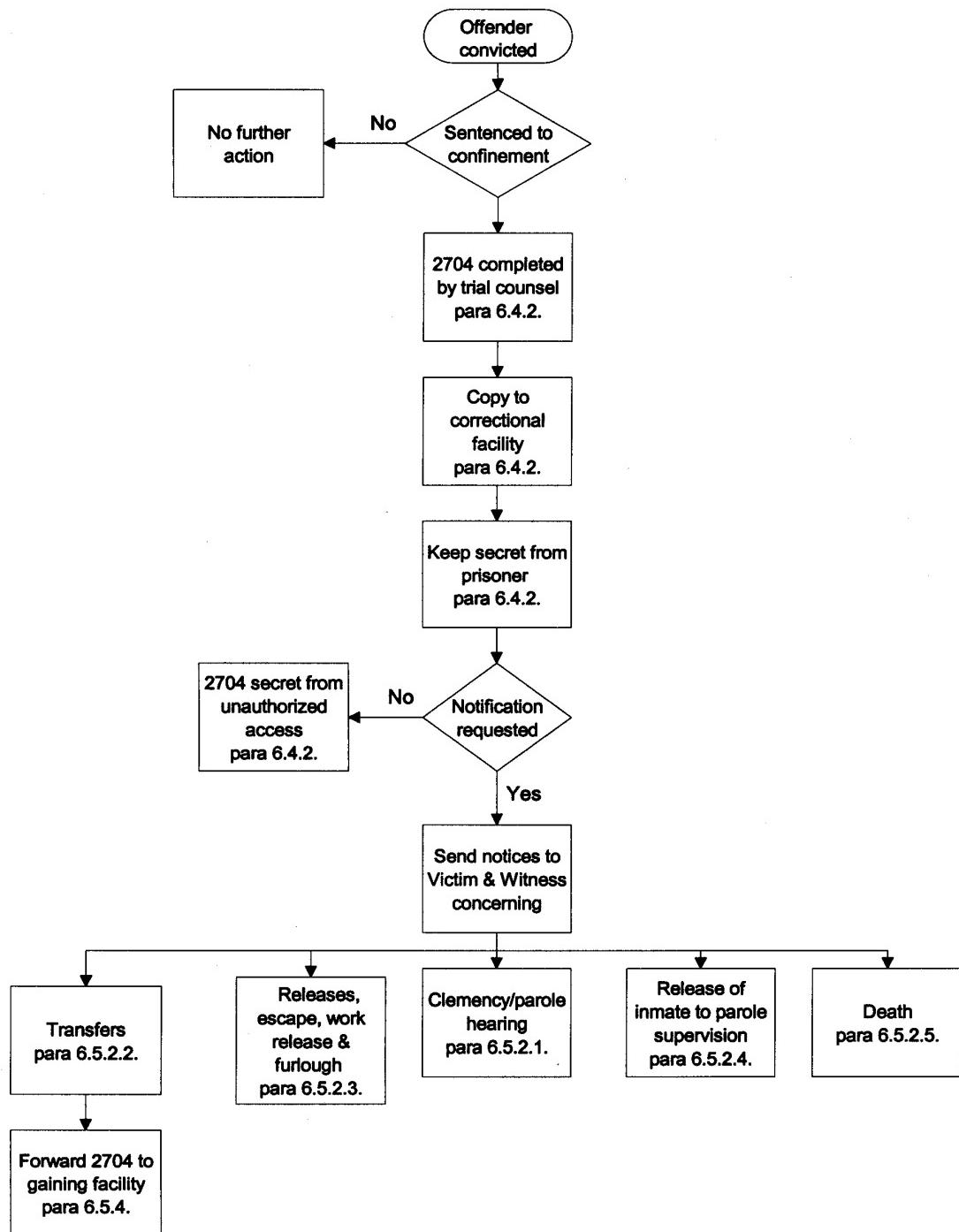
<sup>8</sup> MCO P5800.16A, “Marine Corps Manual for Legal Administration,” August 231, 1999.

<sup>9</sup> BUPERSINST 5800.3, “Victim and Witness Assistance Program,” June 5, 2000.

<sup>10</sup> AFI 31-205, “The Air Force Corrections System,” April 9, 2001.

DoD <sup>1</sup>	Army	Navy	Air Force	Marine Corps
Do not allow confinee access to DD Forms 2704 or 2705 (6.4.2)	18.14b(3) <sup>2</sup> (13.2c) <sup>3</sup>	(Encl 9) <sup>7</sup> (4) <sup>9</sup>	(3.2.2) <sup>10</sup>	(8307) <sup>5</sup>
Report annually to OUSD(P&R) (6.6.1)	(18.26e) <sup>2</sup> (13.7) <sup>3</sup>	(8) <sup>7</sup> (9) <sup>9</sup>	(7.18) <sup>6</sup> (3.3) <sup>10</sup>	(6007.1) <sup>8</sup>

## Appendix F. Victim & Witness Assistance Process at Correctional Facilities (DoDI 1030.2)



# Appendix G. DD Form 2704

VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING INMATE STATUS <i>(This form is exempt from Freedom of Information Act release.)</i>	
<b>PRIVACY ACT STATEMENT</b>	
AUTHORITY: 42 U.S.C. 10606 <i>et seq.</i> , Victim's Rights and Restitution Act of 1990; 18 U.S.C. 1501 <i>et seq.</i> , Victim and Witness Protection Act of 1982.	
PRINCIPAL PURPOSES: To inform victims and witnesses of their post-trial rights; to determine whether the victim or witness of a crime elects to be notified of changes in the confinement status of a convicted criminal offender; and to record the election by the victim or witness of their desire to be notified about subsequent changes in inmate status.	
ROUTINE USES: None.	
DISCLOSURE: Voluntary; however, failure to provide identifying information will prevent the corrections facility from notifying victim or witness of changes in a criminal offender's status.	
<b>SECTION I - ADMINISTRATIVE INFORMATION</b>	
Installation _____ City _____ State _____ ZIP Code _____	
Incident Number _____ Organizational Identifier (ORI) _____	
<b>SECTION II - CERTIFICATION OF NO VICTIM OR WITNESS</b> <i>(Complete this section only if there are no victims or witnesses who are entitled to notification under the Victim's Rights and Restitution Act of 1990, and DoD Instruction 1030.2.)</i>	
As representative for the Government in the court-martial case of United States v. _____ <i>(Name of accused) (Last, first, middle initial)</i> _____, convened by _____ <i>(Social Security Number) (Court-martial convening order number, date, and issuing command)</i>	
I certify that this case does not involve a victim or witness entitled to receive information about the confinement status of the defendant as required by the Victim's Rights and Restitution Act of 1990 (Public Law 101-647; 104 Stat. 4820).	
_____ <i>(Signature of person certifying)</i> _____ <i>(Typed name (Last, first))</i> _____ <i>(Date) (YYYYMMDD)</i> _____ <i>(Grade and title)</i>	
<b>SECTION III - CERTIFICATION OF ADVICE TO VICTIM(S) AND WITNESS(ES)</b> <i>(Complete this section when there are victims or witnesses entitled to notification.)</i>	
I certify that on this date I personally notified the victim(s) and witness(es) in the court-martial case of United States v. _____ <i>(Name of accused) (Last, first, middle initial)</i> _____ <i>(Social Security Number)</i> _____ convened by _____ <i>(Court-martial convening order number, date, and issuing command)</i> whose sentence included confinement, of their right under the Victim's Rights and Restitution Act of 1990 (Public Law 101-647, 104 Stat. 4820), to receive information about the status of the inmate, to include length of sentence, anticipated earliest release date, likely place of confinement, the possibility of transfer, and the right to receive notification of a new place of confinement. I advised of the possibility of parole or clemency with an explanation of these terms. Additionally, I advised of the right to prior notification of the inmate's parole hearings, release from confinement, escape and death. I advised that to receive notification of the inmate's transfer, parole hearings, and release from confinement, the victim or witness must provide the information required in Section IV of this form. I advised all victims and witnesses that if they elect to terminate or reinitiate notifications, or if they change their address listed above, they must contact the Military Service Central Repository listed in Section V.	
_____ <i>(Signature of person providing notification)</i> _____ <i>(Typed name (Last, first))</i> _____ <i>(Date) (YYYYMMDD)</i> _____ <i>(Grade and title)</i>	

DD FORM 2704, MAR 1999

PREVIOUS EDITION IS OBSOLETE.

WHS/DIOR, Mar 99

**SECTION IV - ELECTION TO BE NOTIFIED**

The victim(s) and witness(es) listed below have elected the right to receive information about changes in the status of the inmate by initialing the "Yes" block. If the inmate is transferred, they understand that they will be notified of the address of the new confinement facility. They also understand that if they move or their telephone number changes, they must notify the confinement facility of the new address or telephone numbers in order to be notified.

**LIST ALL VICTIMS AND WITNESSES INVOLVED IN THE CASE.** (Indicate whether a victim or witness by entering "V" or "W" in the appropriate column. Those who elect to be notified of inmate status changes should initial in the "Yes" column; otherwise initial the "No" column.)

## **SECTION V - DISTRIBUTION**

**ADDRESSES** (*Include 9-digit ZIP Code and telephone number.*)

MILITARY SERVICE CENTRAL REPOSITORY	LOCAL CONFINEMENT FACILITY ( <i>Name and address</i> )
LAW ENFORCEMENT/SPECIAL INVESTIGATION	VICTIM/WITNESS ( <i>Individual will receive a copy with all other victim/witness addresses blacked out.</i> )

DD FORM 2704 (BACK), MAR 1999

# **Appendix H. Organizations Visited or Contacted**

## **Office of the Secretary of Defense**

Office of Legal Policy, Deputy Assistant Secretary of Defense (Program Integration)

## **Department of the Army**

Headquarters, Department of the Army, Washington, DC  
Ft. Drum, New York  
Ft. Irwin, California  
Ft. Leavenworth, Kansas  
Ft. Knox, Kentucky  
Ft. Lewis, Washington  
Ft. Sill, Oklahoma  
Ft. Wainwright, Alaska

## **Department of the Navy**

Headquarters, Navy Personnel Command, Millington, Tennessee  
NWS Charleston, South Carolina  
MCAS Miramar, California  
NS Bremerton, Washington  
NS Norfolk, Virginia  
NTC Great Lakes, Illinois

## **Department of the Air Force**

Headquarters, Air Force Security Forces, Lackland AFB, Texas  
Davis Monthan AFB, Arizona  
Edwards AFB, California  
Eglin AFB, Florida  
Ellsworth AFB, South Dakota  
Elmendorf AFB, Alaska  
Grand Forks AFB, North Dakota  
Hill AFB, Utah  
Holloman AFB, New Mexico

Keesler AFB, Mississippi  
Lackland AFB, Texas  
Lakenheath AB, England  
Little Rock AFB, Arkansas  
Luke AFB, Arizona  
Minot AFB, North Dakota  
Offutt AFB, Nebraska  
Osan AB, Korea  
Shaw AFB, South Carolina  
Whiteman AFB, Missouri

## **Marine Corps**

Headquarters, Marine Corps, Washington, DC  
Camp Hansen, Okinawa Japan  
Camp Lejeune, North Carolina  
Camp Pendleton, California  
MCAS Iwakuni, Japan  
Quantico, Virginia

## **Non-Defense Organizations**

Arizona State Prison, Florence, Arizona  
Geary County Detention Center, Kansas  
District Attorney's Office, Sandoval County, New Mexico

# Appendix I. Memoranda to Military Department Judge Advocates General



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

MAR 8 2002

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL, U.S. ARMY

SUBJECT: Department of Defense Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status"

During our evaluation of the Notification Procedures Used by DoD Correctional Facilities on the Release of Certain Military Prisoners (Project No. 2001C003), we gathered data from military confinement facilities regarding their Victim/Witness Program. The review primarily focused on persons convicted by courts-martial of criteria sex offenses, which required special notifications when the prisoner was released. While reviewing records, we also sought to determine whether those prisoners had on file a DD Form 2704, so that the correctional facility could determine whether victim and witness notifications were required when the inmate's status changed. As part of our random sample, we reviewed 28 inmate records, wherein the Army prosecuted the prisoner. Four of the inmates did not have a DD Form 2704 on file.

DoD Instruction 1030.2, "Victim and Witness Assistance Procedures," requires the form to be provided to the gaining confinement facility for all cases resulting in a sentence to confinement. Army Regulation 27-10, "Legal Services Military Justice," paragraph 18.14(b)2, requires prosecutors to complete the form and forward it to the confinement facility. During our visits to various service confinement facilities, nearly all victim and witness coordinators indicated it was common for them to repeatedly trace prosecutors for the DD Forms 2704.

We did not attempt to validate our sample with prosecutors to ascertain whether they had a record of forwarding the form or the timeliness of their actions. However, our sample and the reports by the victim and witness coordinators raise concerns such that I request your assistance in emphasizing the importance of this function and its timely completion to your military justice personnel.

If you have any questions, please call me at (703) 604-8804 or my Director of Oversight, Mr. John Perryman, at (703) 604-8765.

Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

MAR 8 2002

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL, U.S. NAVY

SUBJECT: Department of Defense Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status"

During our evaluation of the Notification Procedures Used by DoD Correctional Facilities on the Release of Certain Military Prisoners (Project No. 2001C003), we gathered data from military confinement facilities regarding their Victim/Witness Program. The review primarily focused on persons convicted by courts-martial of criteria sex offenses, which required special notifications when the prisoner was released. While reviewing records, we also sought to determine whether those prisoners had on file a DD Form 2704, so that the correctional facility could determine whether victim and witness notifications were required when the inmate's status changed. As part of our random sample, we reviewed 23 inmate records, wherein the Navy prosecuted the prisoner. Two of the inmates did not have a DD Form 2704 on file.

DoD Instruction 1030.2, "Victim and Witness Assistance Procedures," requires the form to be provided to the gaining confinement facility for all cases resulting in a sentence to confinement. OPNAV Instruction 5800.7, "Victim and Witness Assistance Procedures," requires the form to be provided to the gaining confinement facility for all cases resulting in a sentence to confinement. OPNAV Instruction 5800.7, "Victim and Witness Assistance Program," paragraph 7(d)2, requires prosecutors to complete the form and forward it to the confinement facility. During our visits to various service confinement facilities, nearly all victim and witness coordinators indicated it was common for them to repeatedly trace prosecutors for the DD Forms 2704.

We did not attempt to validate our sample with prosecutors to ascertain whether they had a record of forwarding the form or the timeliness of their actions. However, our sample and the reports by the victim and witness coordinators raise concerns such that I request your assistance in emphasizing the importance of this function and its timely completion to your military justice personnel.

If you have any questions, please call me at (703) 604-8804 or my Director of Oversight, Mr. John Perryman, at (703) 604-8765.

Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

MAR 8 2002

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL, U.S. AIR FORCE

SUBJECT: Department of Defense Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status"

During our evaluation of the Notification Procedures Used by DoD Correctional Facilities on the Release of Certain Military Prisoners (Project No. 2001C003), we gathered data from military confinement facilities regarding their Victim/Witness Program. The review primarily focused on persons convicted by courts-martial of criteria sex offenses, which required special notifications when the prisoner was released. While reviewing records, we also sought to determine whether those prisoners had on file a DD Form 2704, so that the correctional facility could determine whether victim and witness notifications were required when the inmate's status changed. As part of our random sample, we reviewed 41 inmate records, wherein the Air Force prosecuted the prisoner. Six of the inmates did not have a DD Form 2704 on file.

DoD Instruction 1030.2, "Victim and Witness Assistance Procedures," requires the form to be provided to the gaining confinement facility for all cases resulting in a sentence to confinement. Air Force Instruction 51-201, "Administration of Military Justice," paragraph 7.13.2, requires prosecutors to complete the form and forward it to the confinement facility. During our visits to various service confinement facilities, nearly all victim and witness coordinators indicated it was common for them to repeatedly trace prosecutors for the DD Forms 2704.

We did not attempt to validate our sample with prosecutors to ascertain whether they had a record of forwarding the form or the timeliness of their actions. However, our sample and the reports by the victim and witness coordinators raise concerns such that I request your assistance in emphasizing the importance of this function and its timely completion to your military justice personnel.

If you have any questions, please call me at (703) 604-8804 or my Director of Oversight, Mr. John Perryman, at (703) 604-8765.

Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

MAR 8 2002

MEMORANDUM FOR STAFF JUDGE ADVOCATE TO THE COMMANDANT,  
U.S. MARINE CORPS

SUBJECT: Department of Defense Form 2704, "Victim/Witness Certification and  
Election Concerning Inmate Status"

During our evaluation of the Notification Procedures Used by DoD Correctional Facilities on the Release of Certain Military Prisoners (Project No. 2001C003), we gathered data from military confinement facilities regarding their Victim/Witness Program. The review primarily focused on persons convicted by courts-martial of criteria sex offenses, which required special notifications when the prisoner was released. While reviewing records, we also sought to determine whether those prisoners had on file a DD Form 2704, so that the correctional facility could determine whether victim and witness notifications were required when the inmate's status changed. As part of our random sample, we reviewed 34 inmate records, wherein the Marine Corps prosecuted the prisoner. Nineteen of the inmates did not have a DD Form 2704 on file.

DoD Instruction 1030.2, "Victim and Witness Assistance Procedures," requires the form to be provided to the gaining confinement facility for all cases resulting in a sentence to confinement. Marine Corps Order 5800.15A, "Victim and Witness Assistance Program," paragraph 9(g)14, requires prosecutors to complete the form and forward it to the confinement facility. During our visits to various service confinement facilities, nearly all victim and witness coordinators indicated it was common for them to repeatedly trace prosecutors for the DD Forms 2704.

We did not attempt to validate our sample with prosecutors to ascertain whether they had a record of forwarding the form or the timeliness of their actions. However, our sample and the reports by the victim and witness coordinators raise concerns such that I request your assistance in emphasizing the importance of this function and its timely completion to your military justice personnel.

If you have any questions, please call me at (703) 604-8804 or my Director of Oversight, Mr. John Perryman, at (703) 604-8765.

Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight

# **Appendix J. Report Distribution**

## **Office of the Secretary of Defense**

Under Secretary of Defense (Comptroller)/Chief Financial Officer  
Deputy Comptroller (Program/Budget), Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer\*  
Deputy Chief Financial Officer, Accounting Policy Directorate, Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer  
Under Secretary of Defense (Personnel and Readiness)\*  
Deputy Under Secretary of Defense (Program Integration), Office of the Under Secretary of Defense (Personnel and Readiness)\*  
General Counsel for the Department of Defense\*  
Deputy General Counsel (Personnel and Health Policy)\*

## **Department of the Army**

Assistant Secretary of the Army for Manpower and Reserve Affairs  
Auditor General, Department of the Army\*  
Inspector General, Department of the Army\*  
Headquarters, Department of the Army, Office of G3 (DAMO-ODL)\*  
The Judge Advocate General\*

## **Department of the Navy**

Assistant Secretary of the Navy for Manpower and Reserve Affairs  
Naval Inspector General\*  
Naval Audit Service  
The Judge Advocate General\*  
Headquarters, Navy Personnel Command (PERS-84)\*

## **Department of the Air Force**

Assistant Secretary of the Air Force (Financial Management and Comptroller)\*  
Auditor General, Department of the Air Force  
Inspector General, Department of the Air Force\*  
The Judge Advocate General\*

\*Recipient of draft report

Headquarters, Air Force Security Forces Center\*

## **Marine Corps**

The Staff Judge Advocate to the Commandant of the Marine Corps\*

Inspector General of the Marine Corps

Headquarters, Marine Corps, Deputy Chief of Staff for Plans, Polices and Operation,  
Security and Law Enforcement Branch\*

## **Other Defense Organizations**

Director, Defense Contract Audit Agency

Director, Defense Intelligence Agency

Director, National Security Agency

Inspector General, National Security Agency

Commandant, Defense Acquisition University

## **Congressional Committees and Subcommittees, Chairman and Ranking Minority Member**

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Government Reform

House Subcommittee on National Security Veterans Affairs, and International Relations,  
Committee on Government Reform

House Subcommittee on Government Efficiency, Financial Management, and  
Intergovernmental Relations, Committee on Government Reform

House Subcommittee on Technology and Procurement Policy, Committee on  
Government Reform

\*Recipient of draft report

## Appendix K. Management Comments



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

PERSONNEL AND  
READINESS

APR 19 2002

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL (CRIMINAL  
INVESTIGATIVE POLICY AND OVERSIGHT)

SUBJECT: Draft Report on the Evaluation of DoD Correctional Facility Compliance with  
Military Sex Offender Notification Requirements (project No. 2001C003)

This responds to your request that we review and comment on the subject report.

We concur with the draft report and, following coordination with the Office of the General Counsel, will issue guidance on whether a person sentenced by a summary court-martial for a covered offense requires sex offender notifications, in implementation of recommendation A6 on page 13 of the draft report.

My point of contact for implementation of recommendation A6 is Colonel Steve Strong.  
He may be reached at (703) 697-3387.

*Jeanne B. Fites*  
Jeanne B. Fites  
Deputy Under Secretary of Defense  
(Program Integration)





DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON, DC 20310-0111



June 14, 2002

REPLY TO  
ATTENTION OF

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL,  
CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT

SUBJECT: Draft Report on the Evaluation of DoD Correctional Facility Compliance  
with Military Sex Offender Notification Requirements (Project  
No. 2001C003)

Reference Inspector General, Department of Defense memorandum, March 27,  
2002, subject as above.

I appreciate the opportunity to review and comment on the draft Report. The Army concurs, with comment, in subject Report and recommends revision of the Report as proposed in detail in the enclosure.

While the DoDIG evaluation and the associated Report focused on sex offender registration, we believe it important to note that the Army is in compliance with numerous other relevant criminal justice reporting requirements. We recommend that the Report be annotated to reflect that sex offender notification is merely one of numerous Federal notification and reporting statutes that the DoD and its components are implementing. Further, the Report cannot underestimate the magnitude of the variance in different state laws that DoD is required to put into operation. Finally, we recommend that the Report address the substantial resource implications associated with executing these notification compliance programs.

The Security, Force Protection, and Law Enforcement Division, Headquarters Department of the Army has established a Law Enforcement and Policy Oversight Section that will, among its other responsibilities, establish clear, coherent policies, fully compliant with DoD-mandated criteria, in the arena of sex offender notification. We expect these policy promulgations to be formalized in the forthcoming revision of AR 190-45, *Law Enforcement Reporting*. This new Section will also monitor and oversee Army-wide compliance with these policies. In addition, a pending amendment to AR 27-10, *Military Justice*, coupled with the revised AR 190-45, will mandate extensive coordination between military trial counsel, installation provost marshals, confinement facilities, and the Army Crimes Records Center, establishing several different mechanisms by which to ensure compliance with DoD and Army sex offender notification policies.

Printed on Recycled Paper

-2-

With regard to the Report's finding that, for certain prisoners confined in Army facilities, a DD Form 2704, Victim/Witness Certification and Election Concerning Inmate Status, was not available, the Army now requires the submission of that form to the Security, Force Protection, and Law Enforcement Division, Headquarters Department of the Army, before it will assign confinement space to an incoming prisoner. We believe this requirement will ensure that such forms are promptly submitted to and accessible by the confinement facility and centrally maintained, both eliminating the need for victim/witness coordinators to track the forms and ensuring that victims/witnesses are provided the appropriate follow-on notifications.

As to your request for input regarding whether a person convicted and sentenced by a Summary Court-Martial for a covered offense requires sex offender notifications, the Army's position is that notifications should not be required for such persons.

Again, I appreciate the opportunity to comment on the draft Report.



Reginald J. Brown  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

Enclosure

CF:  
OGC  
DAMO-ODL

## COMMENTS AND RECOMMENDATIONS TO THE BODY OF THE REPORT

### Reference. Part II, Finding A, Evaluation Results: Sex Offender Notification

(1) The language of this recommendation is broad and makes no reference to the multitude of varied state law requirements regarding sex offender notification with which Department of Defense (DoD) and its components are under mandate to comply. Key to ensuring that Army policy on sex offender notification is consistent with DoD policy is the forthcoming revision of Army Regulation (AR) 190-45, *Law Enforcement Reporting*. This revision will incorporate all DoD criteria related to sex offender notification with emphasis on the notification requirements for those categories of military sex offenders referenced in paras A.1.a, b and c of the draft Report. Of particular note is that fact that together, the Office of the Deputy Chief of Staff for Personnel (G-1), Headquarters, Department of the Army (HQDA), and the Office of The Judge Advocate General (OTJAG) have initiated policy and process revisions to identify soldiers convicted of covered sex offenses and assigned to Army confinement facilities and/or to Army installations and units. Army automated personnel systems will utilize a unique code to identify and track these soldiers. Installation provost marshals (PMOs) will ensure that coded soldiers are notified of the requirement to complete the sex offender registration process with the appropriate state and local agencies.

(2) The forthcoming revision of AR 190-45 will impose time requirements and responsibility for completing notifications involving military sex offenders convicted by courts-martial but not sentenced to confinement.

(3) The forthcoming revision of AR 190-45 will establish a system to ensure compliance with Federal laws requiring notifications for military sex offenders and to track sex offender notifications. To provide effective policy oversight, in January 2002, the Army established a Law Enforcement and Policy Oversight Section, comprised of a Section Chief and one action officer, within the Security, Force Protection, and Law Enforcement Division of the G-3, Headquarters Department of the Army (HQDA). Among its other responsibilities, this new Section will establish clear, coherent policies, fully compliant with DOD-mandated criteria in the arena of sex offender notification and will monitor and oversee Army-wide compliance with these policies. This Section also coordinates reporting requirements under the Brady Handgun Violence Protection Act and the annual report to Congress on domestic violence. The intent of this staff realignment is to ensure that HQDA makes available dedicated personnel to support a proactive program to monitor compliance with all such notification and reporting requirements. Members of the Section receive professional training in criminal justice subject matter as well as specialized education in related areas. Further, they participate in a number of DOD and DA programs and committees related to sex offenders, their family members, and the civilian community.

**COMMENTS AND RECOMMENDATIONS TO THE BODY OF THE REPORT**  
(continued)

(4) The Criminal Law Division, Office of the Judge Advocate General (OTJAG) is the proponent for AR 27-10, *Military Justice*. A pending revision to this regulation will require extensive coordination between military trial counsel, installation PMOs, confinement facilities, and the Army Crimes Records Center, establishing several different mechanisms by which to ensure compliance with DoD and Army sex offender notification policies and processes. We believe this coordination will ensure an outcome that meets, if not exceeds, that generated by adding a notice requirement to the Report of the Result of Trial. We expect publication of this new regulation in the very near future.

(5) This recommendation and related portions of the report should be revised to impose on the military departments the responsibility to exercise a "good faith effort" to notify convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, in cases where such persons are no longer under the jurisdiction of the applicable Service. A "good faith effort" would require notification attempts to the "last known or reported address" of such an offender. In the event an offender is located, that case would then be processed in accordance with all applicable DoD and Army policies.

(6) As to your request for input regarding whether sex offender notifications should be required for a person sentenced by a Summary Court-Martial for a covered offense, the Army's position is that notifications should not be required for such persons. As Summary Courts do not qualify as "Federal convictions," it is not appropriate to group them with other categories of offenses for which sex offender notification is required. We understand that the DoDIG already has instituted a policy change consistent with this recommendation.

#### COMMENTS AND RECOMMENDATIONS TO THE BODY OF THE REPORT

##### Reference. Part III, Finding B: Victim and Witness Notification

In coordination with OTJAG, Criminal Law Division, the Security, Force Protection, and Law Enforcement Division of the G-3, HQDA already has implemented measures to correct this issue. On February 22, 2002, HQDA published an Army-wide message requiring installations to submit to the Security, Force Protection, and Law Enforcement Division a completed DD Form 2704, *Victim/Witness Certification and Election Concerning Inmate Status*, as a precursor to the Division's assignment of confinement space to a new prisoner. The Form then will be maintained centrally at HQDA with a copy furnished to the confinement facility. This process was designed to ensure that required documents were both in hand before a prisoner was accepted into confinement and readily available to confinement facility Victim/Witness Coordinators in the performance of their duty to inform victims and witnesses of changes in an inmate's status. This requirement has been strictly enforced. In those cases where has been impossible to complete the DD Form 2704 before initiation of confinement, written justification from the installation has been required to explain the deficiency. We believe this will enable HQDA to track those adjudged prisoners admitted to confinement without a DD Form 2704, and will provide a mechanism to mandate eventual compliance through official channels. Further, HQDA is working through official channels to ensure that DD Forms 2704 are completed, filed and tracked for prisoners presently confined but for whom no DD Form 2704 can be located.



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(MANPOWER AND RESERVE AFFAIRS)  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

MAY 30 2002

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJ: Draft Report on the Evaluation of DoD Correctional Facility Compliance with Military Sex Offender Notification Requirements (Project No. 2001C003) - Attachment 1

The Department of the Navy has reviewed the subject draft report and concurs with the findings and recommendations. The Navy Management position stated in Attachment A is adopted as the DoN position, with the following additional comments.

Recommendation A.1.c: CONCUR WITH COMMENT: Before the Military Departments revise or reissue policy on sex offender notification for military sex offenders convicted outside the United States further guidance should be provided from OUSD(P&R). Guidance should be specific for both military offenders convicted at courts-martial outside the U.S. and military offenders convicted by foreign courts. Offenders convicted outside the U.S. at courts-martial are confined at U.S. military confinement facilities and therefore are already substantially covered by notification processes currently in place. Military offenders convicted by foreign courts and ultimately released back to U.S. authorities for return to the United States create an entirely different category of military sex offenders not clearly addressed by the statute. When this issue was posed informally to OUSD(P&R), the Director of Legal Policy indicated no intent to seek a policy change (Attachment 2). DoD policy guidance regarding this ambiguous category of military sex offenders should be provided, even if it is simply to clarify that such offenders are excluded from the statute's scope.

Recommendation A.4: CONCUR WITH COMMENT: Consideration should also be given to requiring an annotation on promulgating orders, similar to the requirement for DNA processing.

Recommendation B.1: CONCUR WITH COMMENT: In addition to the position stated in Attachment 1, the Office of the Judge Advocate General recently published a Newsmailed to the Navy and Marine Corps Judge Advocate communities re-emphasizing the need to ensure proper and prompt utilization of the DD Form 2704. Additionally, the Naval Justice School provides specific

instruction to all new judge advocates on the preparation of DD Forms 2701-2704, including a graded exercise, as well as offering VWAP/SAVI training as an e-distance learning course.

Recommendation B.2: NO COMMENT

If additional information or assistance is needed, my point of contact is LCDR M. E. Moss, JAGC, USN, at (703)695-4367.

*Thomas V. Colella*

Thomas V. Colella  
Principal Deputy  
Assistant Secretary of the Navy  
(Manpower & Reserve Affairs)

**Attachments:**

1. Navy response to OAIG(A) Draft Report on Project No. 2001C003
2. COL S. Strong (OUSD(P&R) PI-LP) email of 4 Apr 02

Navy Response  
to  
OAIG(A) Draft Report of March 27, 2002  
on  
Evaluation of DoD Correctional Facility Compliance with  
Military Sex Offender Notification Requirements  
Project No. 2001C003

Summary of OAIG(A) Findings, Conclusions and Recommendations

In their report, DoD AIG(A) identified three major findings applicable to Navy.

One: AIG(A) found that DoD published guidance providing for sex offender notifications to be in accordance with statutory requirements, however the Services did not fully implement the guidance and generally are not meeting their notification requirements. The Navy issued SECNAV Instruction 5800.14, "Notice of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," October 23, 2001. This Instruction prescribes notification processes for sex offenders convicted of covered offenses (whether or not confined) by Special or General Courts-Martial, and requires notifications to State and local officials. The Navy guidance is still inadequate because it does not prescribe notifications when a prisoner not currently confined on sex offender charges, but with a previous sex-offense conviction, is released from confinement.

Two: AIG(A) found the Services exercising little organized oversight for their sex offender notification processes and that there was no oversight review at Navy confinement facilities. AIG(A) did find the Navy is the only Service that has adopted formal training to address sex offender notification requirements. The Navy's Brig Managers Course familiarizes Navy corrections managers with the requirements, although this training course only addresses sex offenders convicted at Special or General Courts-Martial and sentenced to confinement. The course lesson plans do not mention Summary Courts-Martial or sex offenders who are not confined.

Three: AIG(A) found that military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and do not always satisfy those requirements even when they receive the documentation. Navy facilities reported 646 adjudged inmates, 122 (19 percent) without a DD Form 2704.

Attachment 1

DOD AIG(A) recommendations applicable to Navy and other Military Departments:

revise and reissue policies on military sex offender notifications, ensuring the policies are consistent with DoD policy and addressing specific notification requirements.

establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement;

adopt systems, with appropriate management oversight mechanisms, to track sex offender notifications and ensure compliance with Federal laws requiring notifications for military sex offenders;

revise current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required; and

complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.

take action to ensure that military confinement facilities receive a DD Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status," : each adjudged inmate entering the confinement facility

Statement of the DON Position

Finding A. The Services did not fully implement the DoD-published guidance and generally are not meeting their notification requirements for military sex offenders.

Navy Management Position. Concur. To insure required notifications are made and made within the required time frame oversight measures need to be developed to include inspections and a tracking system. SECNAV Instruction 5800.14, "Notice of Military Offenders Convicted of Sex Offenses or Crimes Against Minors", October 23, 2001, will need to be revised to incorporate policy guidance related to any new measures that are developed in order to fully implement DoD published guidance.

The Navy's Brig Managers Course will also be updated to reflect changes in the SECNAV Instruction 5800.14 and to provide needed information on management oversight measures. Completion of these actions is expected by 30 September 2002.

**Recommendation A.1.** Military Departments revise and reissue their policies on military sex offender notifications ensuring the policies are consistent with DoD policy and specifically addressing notification requirements for:

- a. military sex offenders who are convicted by courts-martial and not sentenced to confinement;
- b. military offenders with prior sex offender convictions who are currently being released from confinement for non-covered offenses; and
- c. military sex offenders convicted outside the United States and either confined outside the United States, or not confined as a result of the conviction.

**Navy Management Position.** Concur. Proposed revision to SECNAV Instruction 5800.14 will include provisions for notifications to be made on sex offenders convicted by Summary Courts-Martial, those with prior convictions, or those convicted outside the United States. Estimated completion date is 30 September 2002.

**Recommendation A.2.** Military Departments establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement.

**Navy Management Position.** Concur. SECNAV Instruction 5800.14, currently requires NCIS to provide notifications within 15 days for military sex offenders not confined in a service operated confinement facility.

**Recommendation A.3.** Military Departments adopt systems, with appropriate management oversight mechanisms, to track their sex offender notifications and ensure compliance with Federal laws requiring notifications for military sex offenders.

**Navy Management Position.** Concur. A mechanism for tracking sex offender notifications, ensuring compliance with Federal laws, will be developed and reflected in proposed revisions to SECNAV Instruction

5800.14 by 30 September 2002. Navy confinement facility inspection guides were updated on 1 April 2002 to include inspection items reflecting SECNAV Instruction 5800.14 guidance. Instructional changes will be incorporated into inspection guides within 60 days of signature. The Brig Managers Course will be updated to reflect changes in the instruction as well as management oversight measures within 60 days after notification of policy changes. Overall estimated completion date is 31 October 2002.

**Recommendation A.4.** Military Departments revise their current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required.

**Navy Management Position.** Concur. Action regarding this recommendation is beyond the scope of the Department of the Navy. However, compliance with this recommendation would greatly improve a confinement facility's ability to fully implement DoD guidance, particularly if the Reports of Trial indicated the requirement for sex offender notification based on current or prior convictions. At such time as Results of Trial indicate requirement of sex offender notification, PERS-84 will develop policy and procedure to capture and process the information to insure notification is made. Estimated completion date is within 60 day of notification of changes to information provided in Results of Trial.

**Recommendation A.5.** Military Departments complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.

**Navy Management Position.** Concur. In a collaborative effort between the Judge Advocate General of the Navy, Naval Criminal Investigative Services, and PERS-84 a NAVADMIN will be developed and released to insure statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, are completed. This NAVADMIN will be released by 30 September 2002.

**Finding B.** Military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and do not always satisfy those requirements even when they receive documentation.

**Navy Management Position.** Concur. Proposed revisions to SECNAV Instruction 5800.14, addressed in above Navy Management Position on recommendation A.3, will also include oversight and tracking of non-receipt of DD Form 2704 for confinement of sex offenders. Similar revisions will be made to BUPERS Instruction 5800.3, "Victim and Witness Assistance Program (VWAP)", 5 Jan 00, to provide oversight and tracking of non-receipt of DD Form 2704 for all confinements. Proposed revision to BUPERS Instruction 5800.3 is to be completed by 30 September 2002.

**Recommendation B.1.** Military Departments take action to ensure that military confinement facilities receive a DD Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status," for each adjudged inmate entering a confinement facility. Actions should include:

- a. routine confinement facility reporting that identifies (by name and confinement date) those adjudged inmates who were received without a DD Form 2704; and
- b. procedures for confinement facilities to receive missing DD Forms 2704 immediately.

**Navy Management Position.** Concur. A policy letter outlining a system of reporting and tracking non-receipt of DD Form 2704, and procedures for resolving reported deficiencies, will be published by PERS-84 no later than 31 July 2002.

BodnarMoss, Mary Ellen

From: Strong, Steven, T., COL, OSD-P&R [Steven.Strong@osd.mil]  
Sent: Thursday, April 04, 2002 3:04 PM  
To: 'Peck, William'; 'Purcell, Timothy'; Bodnar-Moss, Mary Ellen, LCDR, SECNAV  
Subject: RE: QUESTION REGARDING SECNAVINST 5800.14

It appears that LCDR Bodnar-Moss's message refers to sex offender notification and Mr. Purcell's and Mr Peck's messages refer to collection of DNA samples, so I'll address both.

In my view, the sex offender law, the DNA analysis law, and the DoD policies that implement them (DoDI 1325.7 in the case of sex offender notification and the May 16, 2001, USD (P&R) memo in the case of DNA analysis) do not cover military personnel not convicted by a court-martial.

Without a specific statutory basis for doing so, I would question whether extending the sex offender and DNA sample collection requirements to SOFA cases by Navy policy is a good idea. Because of this authority concern, I have no plans to seek a change to DoD policy.

COL Steve Strong  
Director, Legal Policy  
OUSD(P&R) PI-LP  
(703) 697-3387

-----Original Message-----

From: Peck, William [mailto:WILLIAM.PECK@PERSNET.Navy.Mil]  
Sent: Thursday, April 04, 2002 12:08 PM  
To: 'COL Strong, Steven, T., OSD-P&R'  
Subject: FW: QUESTION REGARDING SECNAVINST 5800.14

Just as a follow-up to Tim's email (copied to you), do you have any initial, top-of-your-head, thoughts on SOFA applicability in DNA cases? Thanks  
Bill

-----Original Message-----

From: Purcell, Timothy  
Sent: Wednesday, April 03, 2002 6:48 PM  
To: Bodnar-Moss, Mary Ellen  
Cc: Peck, William; Purcell, Timothy; 'strongs@pr.osd.mil'; Pettit  
Michelle LT  
Subject: RE: QUESTION REGARDING SECNAVINST 5800.14

LCDR Bodnar-Moss

A reasonable issue, a bit beyond my skill level. This email is forwarded to the Chair, DOD Corrections Council (COL Steven Strong), proponent for the DOD Memorandum for which the SECNAVNOTE is modeled after, and our advocate,

Attachment (2)

LT Pettit (PERS-06L). Possibly future DODI revision can capture this.  
I would advocate moving the SECNAV Notice ASAP as Navy and Marine Corps are near a year delinquent in implementation. If you can slip in the language without higher conflict... go for it!

V/r, tim purcell

-----Original Message-----

From: Bodnar-Moss, Mary Ellen  
To: Purcell, Timothy  
Cc: 'Boveri.Joseph@cnfj.navy.mil'  
Sent: 4/3/2002 4:35 PM  
Subject: FW: QUESTION REGARDING SECNAVINST 5800.14

Tim

I received the below email and after reviewing the instruction and seeing PERS 84 as the drafter, I was wondering if you had any thoughts on the below question. It seems to be a good one to me, and one our instruction doesn't address. In looking at 10 U.S.C. 951 (note) (pasted in below), it seems that we could require notification paperwork to be completed on release from a SOFA prison if the Secretary deems it "as such other conduct... appropriate for inclusion for purposes of this subparagraph." However, I think the instruction (or an enclosure) would have to define a process for a GCMCA or other entity to determine that the foreign conviction encompassed a comparable range of conduct, and also who would have the responsibility to report, since when these members are released from the SOFA prison, they generally get shipped straight back to the States, and I don't think they get back into a military correctional facility system (probably just TPU). Probably also have to look at other due process concerns, like whether it's fair to deem a foreign conviction a "qualifying conviction" since there may be different evidentiary standards and safeguards. Maybe the SOFA trial observer could opine on this as a regular part of the report.

Anyway, you are the experts, so I thought I'd see if you had discussed this issue before.

Thanks,  
LCDR Mary Ellen Bodnar Moss, JAGC, USN  
Special Assistant for Military Law  
Office of the Assistant Secretary of the Navy  
for Manpower and Reserve Affairs (ASN (M&RA))  
(703) 697-3194

OFFENSES AGAINST MINORS

Pub L. 105-119, title I, Sec. 115(a)(6)(C), Nov 26, 1997, 111

Stat 2466, provided that:

"(i) The Secretary of Defense shall specify categories of

conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 170101(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)), and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph

(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to

'(I) provide notice concerning the release from confinement or sentencing of such persons;

'(II) inform such persons concerning registration obligations; and

'(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

'(iii) The procedures and requirements established by the Secretary under this subparagraph shall to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by subparagraphs (A) and (B) (section 115(a)(8)(A) (B) of Pub. L. 105-119, amending sections 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure).

(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18 United States Code.'

-----Original Message-----

From: Boveri, Joseph A. LT (CNPJ) N00J1  
[mailto:[Boveri.Joseph@cnfj.navy.mil](mailto:Boveri.Joseph@cnfj.navy.mil)]  
Sent: Wednesday, April 03, 2002 2:54 AM

To: Mary Ellen Bodnar-Moss (E-mail)  
Subject: QUESTION REGARDING SECNAVINST 5800.14

Mary Ellen,

How goes DC these days? Life in Japan continues without pause  
As the subject line indicates I have a question regarding SECNAVINST  
5800.14 and associated reporting requirements. I was pleasantly surprised to  
see when I reviewed the instruction that ASN(M&RA) is responsible for  
overall policy and execution of the notification program. Since it's your  
instruction (or your organizations instruction) I'm hoping you can point  
me in the right direction.

Here's my question. The instruction noted above does not  
specifically address reporting requirements associated with foreign  
convictions for sex offenses or crimes against minors. Is there a  
reporting requirement for such offenses? As you know numerous SOFA prisoners  
potentially fall into one or more reportable categories. Please let me  
know.

VR/Joe



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON, DC

5 Jun 2002

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING  
OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE

FROM: AF/XO

SUBJECT: Draft Report on the Evaluation of DoD Correctional Facility Compliance  
With Military Sex Offender Notification Requirements, March 27, 2002  
(Project No. 2001C003)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on subject report.

The Air Force concurs with the draft report as written. We agree with the evaluation team's findings and recommendations. The corrective actions taken to eliminate the deficiencies are listed in Attachment 1.

My POC is Lt Col McGoffin, HQ AFSFC/SFC, DSN 473-0941

RANDALL M. SCHMIDT, Maj Gen, USAF  
Assistant Deputy Chief of Staff  
Air and Space Operations

Attachment  
Findings and Corrective Actions

Evaluation of DoD Correctional Facility Compliance With Military Sex Offender Notification Requirements, March 27, 2002, (Project No. 2001C003)

### FINDINGS AND CORRECTIVE ACTIONS

**FINDING A:** "DoD published guidance providing for sex offender notifications in accordance with statutory requirements. The Services, however, did not fully implement the guidance and generally are not meeting their notification requirements."

**RESPONSE:** Concur. In April 2001, detailed guidance on notification requirements were published in Air Force Instruction (AFI) 31-205, *The Air Force Corrections System*. An Interim Change (IC) to AFI-31-205 is currently in coordination and will provide field units even more detailed guidance concerning notification requirements. A Sex Offender Notification program manager position has been established at HQ Air Force Security Forces Center to oversee the program, and in conjunction with Air Force Legal Offices, will ensure related documentation is filled out properly and forwarded to the appropriate location. HQ AFSFC has developed comprehensive checklists for each Air Force unit to use in inspecting their facilities. In addition to the checklist, an accreditation program has been developed for use by MAJCOMs and higher HQs to inspect and accredit confinement facilities a minimum of every three years. The accreditation inspection involves a detailed review of both the Sex Offender and Victim/Witness Notification Programs. Implementation of the accreditation program will occur following publication to the IC to AFI 31-205. ECD: July 02

### RECOMMENDATIONS:

A1. "We recommend that the Military Departments revise and reissue their policies on military sex offender notifications, ensuring the policies are consistent with DoD policy and specifically addressing notification requirements for:"

a. Military sex offenders who are convicted by courts-martial and not sentenced to confinement.

**RESPONSE:** Concur. HQ AFSFC published initial policy in Dec 00. The draft IC to AFI 31-205 provides more detailed guidance on offenders who have been convicted, but not sentenced to confinement. ECD: July 02

b. Military offenders with prior sex offender convictions who are currently being released from confinement for non-covered offenses.

**RESPONSE:** Concur. These requirements are outlined in the draft IC to AFI 31-205. ECD: July 02

c. Military sex offenders convicted outside the United States and either confined outside the United States, or not confined as a result of the conviction.

**RESPONSE:** Concur. These requirements are outlined in the draft IC to AFI 31-205. ECD: July 02

A.2. We recommend the Military Departments establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement.

**RESPONSE:** Concur. Requirement is outlined in the draft IC to AFI 31-205; specifically, it reads: "Once notified of the conviction by SJA, the facility shall notify the agencies immediately, not to exceed 24 hours." ECD: July 02

A.3. We recommend that the Military Departments adopt systems, with appropriate management oversight mechanisms, to track their sex offender notifications and ensure compliance with federal laws requiring notifications for military sex offenders.

**RESPONSE:** Concur. The Sex Offender Notification program manager at HQ AFSFC is the primary POC and "check and balance" to ensure proper notifications are made. Additionally, the accreditation program checklists developed by HQ AFSFC will aid in MAJCOM's and higher headquarters in conducting inspections of corrections programs at a minimum tri-annually to verify compliance. ECD: July 02

A.4. We recommend that the Military Departments revise their current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required.

**RESPONSE:** Concur. Coordination with AF/JA is required to determine the appropriate method for indicating sex offender notification requirements. ECD: Oct 02

A.5. We recommend that the Military Departments complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.

**RESPONSE:** Concur. Letters have been forwarded to the organizations where the inmate was confined or convicted but not sent to confinement. Due to the time frame of the convictions, national agency checks have been conducted to determine the whereabouts of the offender. ECD: 15 Jun 02

A.6. We recommend that the Under Secretary of Defense (Personnel and Readiness), in coordination with the Office of the General Counsel, DoD, issue guidance on whether a person sentenced by a Summary Court-Martial for a covered offense requires sex offender notifications.

**RESPONSE:** Concur. No Air Force action required.

**FINDING B:** Military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and do not always satisfy those requirements even when they receive the documentation.

**RESPONSE:** Concur. Security forces in coordination with AFLSA will define how this process is to be worked out for future offenders. The servicing legal office has the initial responsibility to notify the security forces of an offender meeting the specific requirements.  
ECD: Oct 02

**RECOMMENDATIONS:**

B.1. Military Departments take action to ensure that military confinement facilities receive a DD Form 2704, *Victim/Witness Certification and Election Concerning Inmate Status*, for each adjudged inmate entering a confinement facility. Actions should include:

- a. Routine confinement facility reporting that identifies (by name and confinement date) those adjudged inmates who were received without a DD Form 2704 immediately.

**RESPONSE:** Concur. These requirements and processes are outlined in the draft IC to AFI 31-205. ECD: July 02

- b. Procedures for confinement facilities to receive missing DD Forms 2704 immediately.

**RESPONSE:** Concur. These requirements and processes are outlined in the draft IC to AFI 31-205. ECD: July 02

B.2. The Air Force revise current policies and procedures to require confinement facilities to retain victim and witness data during and after inmate confinement, and restrict victim and witness data access to individuals with a strict need-to-know.

**RESPONSE:** Concur. This requirement was incorporated in to AFI 31-205 published in April 2001. ECD. Complete

## **Evaluation Team Members**

Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of the Assistant Inspector General for Investigations, Office of the Inspector General, Department of Defense.

***John J. Perryman, Project Manager***

***Major Jim Burak, Evaluator***

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